

**REGULAR MEETING AGENDA OF THE
MOUNTAIN BROOK CITY COUNCIL**

JULY 27, 2020, 7:00 P.M.

As authorized by the Governor of the State of Alabama on March 18, 2020, elected officials may deliberate by means of telephone conference, video conference or other similar means of communication. Members of the public are also invited to listen, observe and participate in public meetings by such means as well.

Due to COVID-19, public gatherings of 10 or more are generally not permitted without adequate social distancing. Should anyone wish to listen, observe or participate in the City Council meeting of July 27, 2020 at 7:00 p.m., please join by way of the Zoom app (re: Meeting ID 801-559-1126, password 07272020).

1. Resolution recognizing Doris Young upon her retirement from the O’Neal Library with 40 years of service to the City.
2. Consideration: Resolution expressing gratitude to Patrick Higginbotham for his service on the Board of Zoning Adjustment.
3. Approval of the July 13, 2020, minutes of the regular meeting of the City Council.
4. Consideration: Resolution ratifying the execution of a Municipal Election Services Agreement between the City and Jefferson County Commission with respect to the August 25, 2020, general municipal election.
5. Consideration: Resolution accepting the professional services proposal submitted by Schoel Engineering for a drainage problem study at Northcoat Road and preliminary design services.
6. Consideration: Resolution extending the professional on-call/on-demand professional services agreement between the City and Sain Associations (Resolution No. 2018-096).
7. Consideration: Resolution awarding the bid for utility street-cut patching services and authorize the execution of a 3-year contract for same.
8. Consideration: Resolution awarding the bid for street striping services and authorize the execution of a 3-year contract for same.
9. Consideration: Certificate of election (without opposition) deeming Stewart H. Welch III the Mayor of the City of Mountain Brook, Alabama for the 4-year term of office commencing on the first Monday of November, 2020.
10. Consideration: Certificate of election (without opposition) deeming Virginia Carruthers Smith City Councilor (Place No. 4) of the City of Mountain Brook, Alabama for the 4-year term of office commencing on the first Monday of November, 2020
11. Consideration: Resolution recommending to the ABC Board the issuance of a 020 – Restaurant Retail Liquor license to Alverson and Ireland Fresh Foods, LLC (trade name Porch), 2 Dexter Avenue, 35213.
12. Announcement: The next regular meeting of the City Council is August 10, 2020, at 7:00 p.m. (means and location to be announced).
13. Executive session and adjourn.

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
JULY 13, 2020**

[Pursuant to a proclamation issued by Governor Kay Ivey on March 18, 2020, elected officials are allowed to meet remotely by means of Internet or telephone conference and the public was invited to listen to, observe, or participate in the meeting by such means. The elected officials met by way of Internet video conference and allowed the public to listen, observe and participate by the same means.]

The City Council of the City of Mountain Brook, Alabama met informally by way of Internet video conference at 6:00 p.m. on the 13th day of July, 2020. The Council President called the pre-meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President
William S. Pritchard III, Council President Pro Tempore
Philip E. Black
Lloyd C. Shelton
Alice B. Womack

Absent: Stewart Welch III, Mayor

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Steven Boone.

1. EXECUTIVE SESSION

President Pro Tempore Pritchard made a motion that the City Council convene in executive session to discuss a matter involving good name and character of an individual. The City Attorney verbally certified that the subject matter of the executive session is permissible under the Open Meetings Act. The motion was seconded by Council member Black. There being no further discussion, the vote was called with the following results:

Ayes: Virginia C. Smith, Council President
William S. Pritchard III, Council President Pro Tempore
Philip E. Black
Lloyd C. Shelton
Alice B. Womack

Nays: None

Council President Smith thereupon declared that said motion carried by a vote of 5—0. She then announced that the City Council shall reconvene in upon conclusion of the executive session at approximately 6:30 p.m. by Internet video conference. The pre-meeting was then continued at approximately 6:01 p.m.

[The elected official reconvened the pre-meeting by way of Internet video conference at approximately 6:30 p.m.]

2. AGENDA

1. Three (3) Board of Zoning Adjustment Appointments—Dana Hazen
 - a) Reappoint Norman Orr to a three-year term ending March 24, 2023 (Resolution No. 2020-110 was added to the formal meeting agenda)
 - b) Reappoint Richard Simonton to a three-year term ending July 25, 2023 (Resolution No. 2020-111 was added to the formal meeting agenda)

- c) Appoint a supernumerary member to fill an unexpired term to end December 31, 2021 (Resolution No. 2020-105 was added to the formal meeting agenda)
- 2. MB Safer at Home amendments—Sam Gaston and Whit Colvin (The elected officials each expressed their opinion that City Hall should continue operating without physically opening to the public but rather providing services remotely and by appointment only.)

The following matters were added to the pre-meeting discussion:

- 3. Appoint Gerald Garner as a regular member of the BZA—currently a supernumerary member (Resolution No. 2020-108 was added to the formal meeting agenda)
- 4. Council member Shelton stated that the Library Board has submitted a resolution to change its name from the Emmet O’Neal Library to the O’Neal Library and requests the City Council’s support of such name change (Resolution No. 2020-106 was added to the formal meeting agenda)
- 5. A resolution authorizing the execution of a contractor agreement with respect to the installation of fencing at the upper soccer fields at the High School (Resolution No. 2020-109 was added to the formal meeting agenda)
- 6. A resolution approving and ratifying two compensation policies (on-call and TAC Team fitness training) and modifying a third (standard work week) compensation policy all involving the police department (Resolution No. 2020-107 was added to the formal meeting agenda)
- 7. Review of the other matters to be considered at the formal (7 p.m.) meeting
 - a. Regarding the matter of the Chester’s International Test Kitchen conditional use matter:
 - Shirley Kahn, landlord, asked for the Council to explain the difference between the subject [temporary] conditional use which includes a sunset provision and others seemingly without such provisions to which Council President Smith replied that all conditional use approvals are subject to revocation at the discretion of the City Council depending on circumstances (e.g., number of employees, stress on parking, etc.) Additionally, comparing the subject property to the property located at 1919 Cahaba Road (formerly a bank), the bank property was not retail or restaurant previously as was the space currently occupied by Chester’s International Test Kitchen. Ms. Kahn still questions why some conditional uses may have a time limit while others may not.

[All conditional uses are effectively limited to the applicant-specific lease term. In the case of Chester’s it included an additional provision (a term certain or expiration of the lease).]

3. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the work session of the City Council of the City of Mountain Brook, Alabama held by way of Internet teleconference on July 13, 2020, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that no formal action or votes were conducted at said work session.

City Clerk Approved by
City Council July 27 2020

**MINUTES OF THE REGULAR OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
JULY 13, 2020**

[Pursuant to a proclamation issued by Governor Kay Ivey on March 18, 2020, elected officials are allowed to meet remotely by means of Internet or telephone conference and the public was invited to listen to, observe, or participate in the meeting by such means. The elected officials met by way of Internet video conference and allowed the public to listen, observe and participate by the same means.]

The City Council of the City of Mountain Brook, Alabama met by way of Internet video conference at 7 p.m. on the 13th day of July, 2020. The Council President called the meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President
William S. Pritchard III, Council President Pro Tempore
Philip E. Black
Lloyd C. Shelton
Alice B. Womack

Absent: Stewart Welch III, Mayor

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Steven Boone.

The Council President stated that a quorum was present and that the meeting was open for the transaction of business

1. PRESENTATIONS

Council President Smith called on City Manager Sam Gaston to read aloud the proclamations (Nos. 2020-103 and 104) recognizing Mike Cobb and Scooter Hammers, 30-year co-owners of Crestline Pharmacy, upon the occasion of their recent retirement. [A presentation ceremony will be held at City Hall on Thursday, July 16, 2020, at 10 a.m.]

2. CONSENT AGENDA

Council President Smith announced that the following matters will be considered at one time on the consent agenda provided no one in attendance objects:

Approval of the minutes of the June 22 2020, regular meeting of the City Council

Approval of the minutes of the June 29 2020, special meeting of the City Council

Approval of the minutes of the June 30 2020, special meeting of the City Council

2020-100	Establish a new Iberia Bank account for the recently amended and restated City of Mountain Brook Flexible Benefit Plan	Appendix 1
2020-101	Declare four [Library] chairs and two round tables surplus and authorizing their sale by way of public Internet auction or disposal if not sold at said auction	Exhibit 1, Appendix 2
2020-102	Authorize the execution of a contractor agreement between the City and Advance Plumbing Company for the installation of a water fountain at the Irondale Furnace park	Exhibit 2, Appendix 3

2020-103	Proclamation recognizing Mike Cobb, 30-year co-owner of Crestline Pharmacy, upon the occasion of his retirement	Exhibit 3
2020-104	Proclamation recognizing Scooter Hammers, 30-year co-owner of Crestline Pharmacy, upon the occasion of his retirement	Exhibit 4
2020-105	Appoint Noel Dowling as a supernumerary member to the Board of Zoning Adjustment, to serve without compensation, with the term of office to end December 31, 2021	Exhibit 5
2020-107	Ratify, approve and modify three Police Department compensation policies (on-call pay, TAC Team fitness training, and scheduled workweek)	Exhibit 6
2020-108	Appoint Gerald Garner as a regular member to the Board of Zoning Adjustment, to serve without compensation, with the term of office to end September 13, 2022	Exhibit 7
2020-109	Authorize the execution of a contractor agreement between the City and Acre Fencing Company with respect to the installation of fencing at the upper soccer field of the High School	Exhibit 8, Appendix 4
2020-110	Reappoint Norman Orr to the Board of Zoning Adjustment, to serve without compensation, with the term of office to end March 24, 2023	Exhibit 9
2020-111	Reappoint Richard Simonton to the Board of Zoning Adjustment, to serve without compensation, with the term of office to end July 25, 2023	Exhibit 10

Thereupon, the foregoing minutes, proclamations and resolutions were introduced by Council President Smith and a motion for their immediate adoption made by Council member Shelton. The minutes, proclamations and resolutions were then considered by the City Council. Council member Black seconded the motion to adopt the foregoing minutes, proclamations and resolutions. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith, Council President
William S. Pritchard III, Council President Pro Tempore
Philip E. Black
Lloyd C. Shelton
Alice B. Womack

Nays: None

Abstained: None

Council President Smith thereupon declared that said minutes, proclamations (Nos. 2020-103 and 2020-104) and resolutions (Nos. 2020-100 through 2020-102, 2020-105 and 2020-107 through 2020-111) were adopted by a vote of 5—0 that and as evidence thereof she signed the same.

3. CONSIDERATION OF A RESOLUTION (NO. 2020-106) CHANGING THE NAME OF THE EMMET O'NEAL LIBRARY TO THE O'NEAL LIBRARY (EXHIBIT 11, APPENDIX 5)

The resolution was introduced in writing by Council President Smith who then invited comments.

There being no comments or questions, President Smith called for a motion. Council member Black made a motion for adoption of the resolution. The motion was seconded by Council member Shelton. Thereupon, Council President Smith called for vote with the following results:

Ayes: Virginia C. Smith
William S. Pritchard, III
Philip E. Black
Lloyd C. Shelton
Alice B. Womack

Nays: None

The Council President Smith declared the motion passed by a vote of 5—0. The Council President Smith declared that the said resolution (No. 2020-106) is hereby adopted by a vote of 5—0 and, as evidence thereof, she signed the same.

4. CONSIDERATION OF A RESOLUTION (NO. 2020-112) EXTENDING THE CONDITIONAL USE FOR CHESTER'S INTERNATIONAL KITCHEN LOCATED AT 2037 CAHABA ROAD (EXHIBIT 12, APPENDIX 6)

The resolution extending the Office conditional use in a Local Business District for Chester's International Kitchen with respect to the property located at 2037 Cahaba Road (formerly Joe Muggs) under the same terms and conditions as approved upon the adoption of Motion No. 2017-069 dated May 22, 2017, for not more than twelve months ending January 31, 2022, or the expiration/termination of the lease agreement, whichever occurs first, was introduced in writing by Council President Smith who then invited comments.

There being no comments or questions, President Smith made a motion for adoption of the resolution. The motion was seconded by Council member Womack. Thereupon, Council President Smith called for vote with the following results:

Ayes: Virginia C. Smith
Lloyd C. Shelton
Alice B. Womack

Nays: William S. Pritchard, III
Philip E. Black

Council President Smith declared that the said resolution (No. 2020-112) is hereby adopted by a vote of 3—2 and, as evidence thereof, she signed the same.

5. ANNOUNCEMENTS

The next regular meeting of the City Council will be July 27, 2020, at 7:00 p.m. with the location and means to be determined and announced at a later date.

6. ADJOURNEMENT

There being no further business or matters for discussion, Council President Smith adjourned the meeting at approximately 7:10 p.m.

7. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the regular meeting of the City Council of the City of Mountain Brook, Alabama by Internet teleconference on July 13, 2020, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.

City Clerk
Approved by City Council July 27, 2020

EXHIBIT 1**RESOLUTION NO. 2020-101****A RESOLUTION AUTHORIZING THE SALE OR DISPOSAL
OF CERTAIN SURPLUS PROPERTY**

WHEREAS, the City of Mountain Brook, Alabama, has certain items of personal property which are no longer needed for public or municipal purposes; and

WHEREAS, Section 11-43-56 of the Alabama Code of 1975 authorizes the municipal governing body to dispose of unneeded personal property.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mountain Brook, as follows:

Section 1. It is hereby established and declared that the following property owned by the City of Mountain Brook, Alabama is not needed for public or municipal purposes and is hereby declared surplus property:

Four (4) upholstered club chairs in fair condition and two (2) purple laminated end tables in fair condition.

Section 2. That the City Manager, or his designated representative, is hereby authorized and directed to sell said property by way of public Internet auction or to dispose of such property not sold at auction.

APPENDIX 2**EXHIBIT 2****RESOLUTION NO. 2020-102**

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of a Contractor Agreement between City and Advance Plumbing Company, in the form as attached hereto as Exhibit A, with respect to the installation of drinking fountain at Irondale Furnace park.

APPENDIX 3

RESOLUTION NO. 2020-113

**EXPRESSION OF GRATITUDE TO DORIS YOUNG
FOR HER DEDICATED SERVICE TO THE O'NEAL LIBRARY**

WHEREAS, Doris Young began work at the O'Neal Library on April 1, 1976; and

WHEREAS, Doris Young worked her way up from a page to the Circulation Department Manager; and

WHEREAS, Doris Young has welcomed thousands of people to the Library; and

WHEREAS, Doris Young served as a staff representative on the Building Committee for the O'Neal Library; and

WHEREAS, Doris Young has taken pride in maintaining the current building, inside and out; and

WHEREAS, Doris Young has shared her time and talents by serving as the Chair of the Jefferson County Library Cooperative Circulation Roundtable; and

WHEREAS, Doris Young has adapted gracefully to many changes in library services in her 44 years at the O'Neal Library; and

WHEREAS, it is the desire of the residents of Mountain Brook to express their appreciation to Doris Young and recognize her outstanding and unparalleled service to our Library and the residents of this community and her commitment to public service; now, therefore,

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the Mayor and City Council, on behalf of all the residents of Mountain Brook, do publicly thank Doris Young for her years of dedicated service to the O'Neal Library and the City of Mountain Brook and wish her well in her future endeavors.

ADOPTED: This 27th day of July, 2020.

Council President

APPROVED: This 27th day of July, 2020.

Mayor

2020-113

EXPRESSION OF GRATITUDE TO PATRICK HIGGINBOTHAM
FOR HIS DEDICATED SERVICE TO THE CITY ON THE
BOARD OF ZONING ADJUSTMENT

WHEREAS, Patrick Higginbotham has served with distinction on the Board of Zoning Adjustment of the City of Mountain Brook from March, 14, 2005 to June 15, 2020; and

WHEREAS, Patrick Higginbotham has served as Chairman to the Board of Zoning Adjustment from October 8, 2012 to June 15, 2020; and

WHEREAS, In Patrick Higginbotham's tenure on the Board of Zoning Adjustment he consistently exhibited a dedication to the integrity of the city's zoning ordinance, and by extension, a dedication to the physical integrity and developmental composition of the residential neighborhoods of the city of Mountain Brook, and;

WHEREAS, Patrick Higginbotham unfailingly led the Board of Zoning Adjustment by example, through his exemplary work ethic; always arriving to the meetings having read all supporting material, and being prepared for the meetings with insightful questions and points of view, and;

WHEREAS, Patrick Higginbotham, as chairman of the Board of Zoning Adjustment, exhibited professionalism in his leading of the meetings, ensuring that the spirit of the zoning ordinance was held intact; but at the same time, exhibiting kindheartedness to those seeking a variance; and

WHEREAS, Patrick Higginbotham's detailed analysis of variance cases, and his judicious methodology in arriving at sound conclusions, served as an example to junior members of Board of Zoning Adjustment for 15 years; and

WHEREAS, it is the desire of the City of Mountain Brook to express its gratitude to Patrick Higginbotham for his unselfish service and tireless efforts while serving on the Board of Zoning Adjustment and;

NOW, THEREFORE, BE IT RESOLVED that the City Council and Mayor, on behalf of the residents of Mountain Brook, do publicly thank Patrick Higginbotham for his exemplary service.

ADOPTED: The 27th day of July, 2020.

Virginia C. Smith, President

APPROVED: The 27th day of July, 2020.

Stewart H. Welch III, Mayor

2020-114

RESOLUTION NO. 2020-115

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby ratifies the execution by the City Manager, for and on behalf of the City, of the agreement (attached hereto as Exhibit A) with the Jefferson County Commission for election services in conjunction with the City's August 25, 2020, general municipal election.

ADOPTED: This 27th day of July, 2020.

Council President

APPROVED: This 27th day of July, 2020.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on July 27, 2020, as same appears in the minutes of record of said meeting.

City Clerk

10012116408, Invoice no. 8690_20200717

St. Luke's	2	2
City Hall	4	2
Brookwood Baptist	3	2
Canterbury UMC	2	1
Cherokee Bend Elementary	2	2
Mtn Brook Community Church	3	3
Totals	16	12

\$9,945.70 STATE OF ALABAMA

JEFFERSON COUNTY



MUNICIPAL ELECTION SERVICES AGREEMENT

THIS AGREEMENT entered into this July 27, 2020, by and between Jefferson County Commission, political subdivision of the State of Alabama (hereinafter called "the County"), and the City of Mountain Brook, AL 35213, (hereinafter called "the City").

WHEREAS, the City's Municipal election will occur on August 25, 2020, and, if required, a runoff election will occur on October 6, 2020; and

WHEREAS, the City desires to purchase certain election services from the County.

NOW, THEREFORE IN CONSIDERATION OF THE ABOVE AND THE BELOW, the parties hereto do mutually agree as follows:

SCOPE OF SERVICES; The Scope of this agreement is for County's General Services Department-Elections Division to provide election services for the above specified election which may include requested equipment and services as follows; ES&S DS-200 ballot tabulators, ES&S AUTOMARKS (voter assist terminals, for handicap voters), KNOWINK POLLPADS (electronic ePollbooks for Election Day voter look-up and check-in), voter privacy booths, tables, chairs, exterior "vote here" signage. Election services also includes ballot design and layout, equipment coding, assistance with equipment logic and accuracy testing, ePollbook data downloads and set up, equipment delivery/pickup and Election Day support for the provided equipment. City is responsible for ballot proofing accuracy and authorization.

EXCLUSIONS; Ballot printing services and Election Day supplies are not included in this agreement. City shall make separate provisions for ballot printing and Election Day supplies.

MUNICIPAL ELECTIONS; The specified elections equipment may be used to conduct Municipal elections for cities which lie within the legal jurisdiction of Jefferson County Alabama

EQUIPMENT; The County agrees to provide the following equipment for the above listed Municipal Election;

Registered Voters Total: 17,000

EQUIPMENT	UNIT RATE	UNIT OF MEASURE	QUANTITY	EXTENDED COST
DS200 Tabulators (2/site)	\$450.00	each	6	\$ 2,700.00
DS200 (Absentee) City Hall	\$450.00	each	1	\$ 450.00
AUTOMARKS (1/site)	\$450.00	each	6	\$ 2,700.00
AUTOMARK (Absentee)	\$450.00	each	0	\$ 0.00
POLLPAD Electronic Pollbook	\$125.00	each	16	\$ 2,000.00
Equipment Delivery	\$280.00	per precinct	6	\$ 1,680.00
Voter List - Posting/Pub	\$11.00	per 1000 Names*	1	\$ 187.00
Voter List - CD	\$11.00	per 1000 Names* + \$45	1	\$ 232.00
Tables 4/site	\$0.00	each	24	\$ 0.00
Chairs 6/site	\$0.00	each	36	\$ 0.00
Privacy Booths	\$0.00	each	11	\$ 0.00
"Vote Here" Signage	\$0.00	each	6	\$ 0.00
* Rounded up			GRAND TOTAL:	\$ 9,949.00

List above

List above

DELIVERY AND PICKUP OF EQUIPMENT; County has entered into a third party contractual agreement for delivery/pickup services of election equipment. The City clerk shall be responsible for coordination with the precinct's site contact person for the equipment deliveries/pickups.**

****In addition to the delivery base rate listed above, the County will be reimbursed by the City an additional \$175.00 per each site for redelivery if the equipment cannot be delivered on the scheduled delivery date and time due to the fault of the City.**

INSPECTION; The County and the City shall jointly inspect each piece of equipment and note the condition of each item prior to the release of equipment to the City and again immediately upon return of the equipment to the County. The equipment shall be returned in the same condition it was in at the time of release. City shall be responsible for all repair or replacement cost for damaged equipment.

ck 118782

STATE OF ALABAMA
JEFFERSON COUNTY

There will be no run-off. Only one contested race with two candidates.



ATTACHMENT A

RUNOFF ELECTION REQUEST FORM

In the event that the City has a runoff election and the City requests election services from the County, the City Clerk shall contact the Jefferson County Chief of Elections at the address/phone listed below and coordinate submission of the requested equipment and services;

Jefferson County General Services Department
Election Division, Chief of Elections- Room 1
716 Richard Arrington Jr. Blvd N
Birmingham, Alabama 35203
Phone 205-849-2391

City; Mountain Brook, AL 35213

Date of the Runoff election; October 6, 2020

Equipment Selection

EQUIPMENT	UNIT RATE	UNIT OF MEASURE	QUANTITY	EXTENDED COST
DS200 Tabulators	\$450.00	each		\$ 0.00
DS200 (Absentee)	\$450.00	each		\$ 0.00
AUTOMARKS	\$450.00	each		\$ 0.00
AUTOMARK (Absentee)	\$450.00	each		\$ 0.00
POLLPAD Electronic Pollbook	\$125.00	each		\$ 0.00
Equipment Delivery	\$280.00	per precinct		\$ 0.00
Voter List - Posting/Pub	\$11.00	per 1000 Names*		\$ 0.00
Voter List - CD	\$11.00	per 1000 Names* + \$45		\$ 0.00
Tables	\$0.00	each		\$ 0.00
Chairs	\$0.00	each		\$ 0.00
Privacy Booths	\$0.00	each		\$ 0.00
"Vote Here" Signage	\$0.00	each		\$ 0.00
* Rounded up			GRAND TOTAL:	\$ 0.00

**City shall include payment for services with this attachment in order for the services to be provided by the County.*

Steven Boone
City Clerk

Steven Boone
Signature, City Clerk

7/22/2020
Date

RESOLUTION NO. 2020-116

BE IT RESOLVED by the City Council of the City of Mountain Brook that the City Council hereby accepts the professional services proposal submitted by Schoel Engineering Company, Inc., in the form as attached hereto as Exhibit A, with respect to the Northcoat Road Draingae problem study and preliminary design services.

ADOPTED: This 27th day of July, 2020.

Council President

APPROVED: This 27th day of July, 2020.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on July 27, 2020, as same appears in the minutes of record of said meeting.

City Clerk

Agreement for Consulting Services

Northcote Road Drainage Problem Study and Preliminary Design

July 10, 2020

This **AGREEMENT**, entered into by and between **The City of Mountain Brook, Alabama**, hereinafter referred to as the **Client**, and **Schoel Engineering Company, Inc.**, hereinafter referred to as the **Consultant**, is for Consulting Services associated with the study of a drainage problem near the south end of Northcote Drive in the City of Mountain Brook.

PROJECT OVERVIEW

A major drainage way crosses Northcote drive around 150 feet from the intersection of Northcote Drive and Warrington Road. The streetscape and portions adjacent residential properties are impacted by flooding several times a year. A preliminary evaluation suggests that the storm pipe crossing Northcote and running to the receiving waterway is undersized

This study will evaluate the drainage conditions, develop a hydrologic model of the basin, and suggest a design that will alleviate the flooding problem (to the extent practicable).

PROPOSED SCOPE & SERVICES

1. Drainage Study and recommendations of improvements

The Consultant will perform a drainage study of the drainage way that crosses Northcote Drive. Recommendations for improvements will be made and an exhibit and brief narrative prepared and submitted. The detailed scope is as follows:

- Field Survey pipe crossing and confluence with receiving stream
- Develop GIS base map of drainage basin
- Determine hydrologic characteristics of the drainage basin
- Develop hydrologic model using HEC-1
- Prepare preliminary design of drainage improvements
- Discuss preliminary results with Client
- Develop study report and exhibits

Lump Sum Fee \$5,300 (\$1,500 surveying, \$3,800 modeling and prelim design)

NOT INCLUDED IN SCOPE OF WORK

1. Final Design (possibly future work, or field designed by Public Works)

If the Consultant performs additional services to perform the contemplated study that are not included in the Proposed Scope and Services, the fee for the additional services will be agreed upon in advance and billed according to the Schedule of Unit rates.

SCHEDULE OF UNIT RATES – EFFECTIVE THROUGH 12/31/2020

Senior Principal	\$	275.00 per hour
Principal	\$	200.00 per hour
Chief Land Surveyor	\$	200.00 per hour
Senior Project Manager	\$	150.00 per hour
Project Manager	\$	140.00 per hour
Assistant Project Manager	\$	130.00 per hour
Senior Professional	\$	140.00 per hour
Project Professional	\$	115.00 per hour
Staff Professional	\$	100.00 per hour
Senior Designer / Survey Drafter / Specialist	\$	100.00 per hour
Designer / Survey Drafter / Specialist 2	\$	85.00 per hour
Designer / Survey Drafter / Specialist 1	\$	75.00 per hour
Field Survey Party	\$	175.00 per hour
Laser Scanning and Registration	\$	3,000.00 per day
Modeler	\$	125.00 per hour
Admin Support/Intern	\$	70.00 per hour
Transportation	\$	0.58 per mile

The above fees are inclusive of all expenses or charges that Consultant may incur in connection with provision of Services on the Project, including travel, mail, courier services, communication and a commercially reasonable quantity of copying and reproduction expenses.

GENERAL TERMS AND CONDITIONS

1) Services performed under this Agreement will be conducted in a manner consistent with that level of care and skill exercised by members of the profession currently practicing under similar conditions. Plans, specifications, and submittals will be prepared in accordance with the written standards of the governing authorities having jurisdiction. Any extraordinary requirements for approvals will be considered additional services. Except as expressed herein, no other warranty, expressed or implied, is made. Nothing in this agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other party.

2) Consultant agrees that, to the fullest extent permitted by law, it will defend, indemnify, reimburse and hold Client harmless from the expenses (including those for attorneys' fees, litigation costs and court expenses), damages (including those for bodily injury, death or damage to Clients' property or that owned by third parties) and losses that Client might incur that arise from the following types of claims, causes, suits or actions relating to the Project, the Project site, or Consultant's breach of its obligations under this Agreement (collectively, "Claims"):

(a) professional liability Claims by the Client against the Consultant to the extent caused by Consultant's negligent performance of its professional services contemplated hereunder (a "Professional Liability Claim"); provided that (i) Consultant's total liability for a Professional Liability Claim (including, but not limited to, those arising from its negligence, errors and omissions, or those alleging strict liability, breach of contract or breach of warranty) shall not exceed the minimum limits of the Consultant's Professional Liability insurance coverage required herein in subpart 7(a) below; and (ii) nothing in this provision obligates Consultant to indemnify Client from a Professional Liability Claims resulting from Client's negligence or willful misconduct;

(b) any Claims for bodily injury, death, or property damage by third parties against the Client that arise out of any "occurrence" as that term is defined by Consultant's policy of Commercial General Liability insurance required in section 7(b) below, provided that (i) Consultant's total liability under this provision shall not exceed the amount of the minimum limits of the Comprehensive General Liability policy required in subpart 7(b) below; and (b) nothing in this provision shall obligate Consultant to indemnify the Client for Claims by third parties that result from the sole negligence or the willful misconduct of the Client. Nothing herein is intended or shall be interpreted to demand or require Consultant to defend or indemnify the Client from and against any third-party claims, demands, actions, proceedings or suits alleging or in any way arising out of Consultant's breach of its professional services obligations or warranty hereunder, except to the extent provided for in subsection (a) above.

3) The fees for different phases of Services in this Agreement are based on the Scope of Services herein. If the above outlined Scope of Services is changed, or if there are other services that may be requested by the Client, these additional services will be performed at the above hourly rates, or at a revised fee that the parties will negotiate to their mutual satisfaction. If construction of the Project is delayed and completed more than six (6) months following the anticipated completion date set forth herein, the Consultant reserves the right to adjust its Hourly rates for inflation costs on a one-year interval from the date of this proposal.

4) If a claim, dispute, and other controversy arises between Consultant and Client concerning this Agreement or the alleged failure to perform their respective responsibilities hereunder (a "Dispute"), the respective Project Representatives for the Parties will use good faith efforts to amicably resolve such Dispute. If the Dispute is not resolved by the Project Representatives, it will be escalated to the senior official or manager level of each party for consideration. If a Dispute other than as a result of Client's failure to pay amounts undisputedly due hereunder is not resolved at the senior level, it will be submitted to mediation before, and as a condition precedent to, either party availing themselves of remedies provided by law. Mediation shall be held in the county where the Project is located, and if the parties cannot agree on a mediator, then one shall be appointed by the American Arbitration Association (AAA). The parties agree to equally split the cost billed by the mediator.

5) Services not expressly set forth in writing as basic or additional services and listed in the proposal to this Agreement are excluded from the scope of the Consultant's Services, and the Consultant assumes no duty to the Client to perform them unless agreed in a subsequent writing.

6) Client, at its expense, will provide the Consultant with all required site information, existing plans, reports, studies, project schedules and similar information that is contained in Client's files. The Consultant may rely on the information provided by the Client without verification. The Client shall participate with the Consultant by providing all information and criteria in a timely manner, review documents and make decisions on project alternatives to the extent necessary to allow the Consultant to perform the Scope of Services within established schedules.

7) Consultant's Insurance. For the duration of the Project and the Agreement and for limits not less than stated below, Consultant, at its sole expense, shall maintain the following insurance with a company(ies) lawfully authorized to do business in Alabama and reasonably acceptable to Client:

(a) Professional Liability with minimum limits of not less than One Million Dollars (\$1,000,000.00) covering claims to the extent caused by Consultant's negligent performance of professional services or breach of professional warranty. This Professional Liability policy shall include coverage on an occurrence basis;

(b) Comprehensive General Liability with minimum limits of not less than One Million Dollars (\$1,000,000.00), combined single limit and aggregate for bodily injury and property damage. This Comprehensive General Liability policy shall include coverage on an occurrence basis for premises/operations, products/completed operations, assumed contractual obligations, and independent contractors; and

(c) **Workers Compensation/Employer's Liability:** Workers' Compensation as required by statute and Employer's Liability with limits of Five Hundred Thousand Dollars (\$500,000) per occurrence.

Consultant may satisfy its insurance obligations hereunder through a combination of primary, umbrella and excess policies. Before commencement of any Services, the Consultant shall provide Client a certificate(s) of insurance evidencing compliance with the requirements in this section. Further, through an endorsement,, Client shall be named an additional insured on the Comprehensive General Liability and any applicable umbrella and excess policies

8) All reports, plans, documents, materials created by Consultant or its work product from its Services (collectively, the "Instruments of Service") shall remain the property of the Consultant, and are intended solely for uses related to this Agreement and construction of the Project. Notwithstanding, Consultant grants Client a perpetual license to distribute to any third party, reproduce or otherwise use any of the Instruments of Service for purposes it deems reasonably necessary that relate to construction of the Project or conditions at the Project site. Client agrees and acknowledges any reuse of the Instruments of Service for purposes outside of this Agreement or the Project, or any failure to follow Consultant's recommendations in those Instruments without Consultant's written permission, shall be at the Client's and other user's sole risk.

9) This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure to perform in accordance with its terms by the other party through no fault of the terminating party. If this Agreement is terminated by Consultant due to default of Client, it agrees that Consultant shall be paid for total charges for work performed prior to the termination notice date.

Additionally, at Client's convenience and without cause or default by Consultant, Client may suspend or cancel the Agreement, performance of Services or work on the Project at any time by providing written notice to Consultant. In the event of such suspension or cancelation, Client will compensate Consultant for Services performed up to through the date of that notice.

10) **Delayed Performance/Force Majeure Events.** Neither party to this Agreement shall be liable to the other for any failure to perform its respective obligations (including payment obligations) under it during any period in which its performance is delayed by circumstances beyond its reasonable control, such as fire, flood, war, embargo, strike, riot, or the intervention of any governmental authority (a "Force Majeure Event"). However, the delayed party must promptly provide the other with written notice of the Force Majeure Event, the delayed party's time for performance will be excused only for the duration of that Event, and, if that Event lasts longer than 30 days, then the other party may immediately terminate, in whole or in part, this Agreement by giving written notice to the delayed party.

11) The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.

12) Consultant shall not be responsible for construction safety or construction procedures at the Project site, nor will it be responsible for the quality of the work performed by the Contractor or any consultants that are not retained by it.

13) At Client's request and for its convenience, Consultant may provide documents and its work product in electronic format. Data, words, graphical representations, and drawings that are stored on electronic media or which are transmitted electronically, may be subject to uncontrollable alteration. The printed, signed and sealed hard copy is the actual professional Instrument of Service. In the event of a discrepancy between the electronic document and the hardcopy document, the hardcopy document will prevail.

14) This Agreement is entered with the expectation that it is not being used in a price comparison with other firms. Alabama law prohibits licensed engineers and land surveyors from participating in any process that solicits prices from two or more licensed engineers or land surveyors simultaneously. The law defines this practice as bidding and participation by a licensee is prohibited. If this agreement is being used in this manner, we must by law, withdraw this agreement from consideration.

15) **Limitation of Liability.** In no event may Consultant recover from Client any special, incidental, consequential or any other indirect damages whatsoever of any description (including, without limitation, damages for lost profits, lost advantage, lost opportunity, loss of savings or revenues or for increased cost of operations) or amount arising from the Client's breach of its obligations hereunder or suspension or termination of this Agreement.

16) **Project Representative.** Each party shall appoint a representative who shall coordinate with the other party on all matters related to the performance of the Services and the administration of this Agreement (the "Project Representative"). Any notice required hereunder shall be sufficiently given when sent to the appropriate Project Representative via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to the party to be in receipt thereof.

17) This Agreement may be executed in counterparts each of which when executed by the parties shall be deemed to be a complete original. An electronic or facsimile copy of the executed contract or counterpart shall be deemed, and shall have the same legal force and effect as, an original document.

18) Any forbearance or delay on the part of Client in enforcing any of its rights under this Agreement shall not be construed as a waiver of such rights. No terms of this Agreement shall be waived unless expressly waived in writing.

19) Consultant may not assign its rights, obligations or the benefits of this Agreement to any third party without the written consent of Client, which consent may be withheld for any reason.

20) This Agreement is made only for the benefit of the parties. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

21) Consultant is an independent contractor of Client. This Agreement does not create any partnership, joint venture or principal-agent relationship between the parties. Further, Client retains no control or authority with respect to its means and methods in which Consultant (or any of its employees or representatives) performs their work or Services.

22) **Immigration Law Compliance.** Consultant represents and warrants to Client that: (i) it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, *et seq.*, Code of Alabama 1975, as amended (the "Act"); (ii) it has enrolled or will enroll in the E-Verify program prior to performing any Services on the Project in Alabama and shall provide documentation establishing that it is enrolled in the E-Verify program. During the performance of this Agreement, the Consultant shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations; (iii) it will comply with all applicable provisions of the Act with respect to subcontractors, if any, that it engages on the Project by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work on the Project in Alabama that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Consultant further represents and warrants that it shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which it knows is not in compliance with the Act; and (iv) by signing this Agreement, it affirms, for the duration of the Agreement, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, if Consultant is found to be in violation of this provision, it shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

23) **Amendment.** Neither this Agreement nor any of the provisions herein may be amended or modified except in accordance with the terms of a subsequent written instrument that is signed by both parties.

24) This instrument sets forth the entire understanding between the parties concerning the matters herein, and, unless expressed herein, all oral representations, prior negotiations, understandings,

agreements, conditions, and terms discussed between them prior to acceptance and signing of this Agreement are of no effect and are deemed to have merged herein.

25) This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Alabama.

(Signature Page Follows)

Whereas, the undersigned, duly authorized representatives of the parties execute this Agreement on behalf of their respective organization on the date(s) shown below.

CITY OF MOUNTAIN BROOK, ALABAMA (CLIENT)

By: _____
Stewart H. Welch III

Its: Mayor

Date: _____

SCHOEL ENGINEERING COMPANY, INC. (CONSULTANT)

By: Wals Schoel III
Walter Schoel III

Its: President

Date: July 10, 2020 _____

Below please print or type the following information for the individual to whom invoices for payment should be sent, and enter the names of the respective Project Representatives.

Company: _____

Client: _____

Street Address: _____

City, State, Zip: _____

Phone Number: _____ **Fax Number:** _____

Email Address: _____

Client's Project Number: _____ **Client's Purchase Order Number:** _____

Consultant's Project Representative: _____

Client's Project Representative: _____

RESOLUTION NO. 2020-117

BE IT RESOLVED by the City Council of the City of Mountain Brook that the City Council hereby accepts the professional services proposal submitted by Sain Associates, in the form as attached hereto as Exhibit A, with respect to on-call/demand contract engineering services.

ADOPTED: This 27th day of July, 2020.

Council President

APPROVED: This 27th day of July, 2020.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on July 27, 2020, as same appears in the minutes of record of said meeting.

City Clerk



SAIN
ASSOCIATES

AGREEMENT

BETWEEN

SAIN ASSOCIATES, INC.

AND

CITY OF MOUNTAIN BROOK

ENGINEERING ON-CALL CONTRACT

SA # 18-0157

July 9, 2020

AGREEMENT

PROJECT: ENGINEERING ON-CALL CONTRACT

This AGREEMENT is made and entered into by and between the City of Mountain Brook, Party of the First Part, hereinafter referred to as the CITY, and Sain Associates, Inc., in the execution and performance of the AGREEMENT, qualified to do business in the State of Alabama, Party of the Second Part, hereinafter referred to as the CONSULTANT.

WHEREAS the CONSULTANT has agreed and by these presents does agree with the CITY for the consideration hereinafter mentioned to perform engineering support services on an as-needed basis.

ARTICLE I – SCOPE OF WORK

The scope of work is to provide engineering support services to the CITY as City Engineer, which may include but not limited to: review of subdivision plats and engineering plans submitted to the CITY for approval; land surveying, including property surveys, plats, and topographic surveys; civil engineering design, including master planning, design of roadways, utilities, drainage and site development; and traffic engineering. The services under this agreement will continue for a period of two (2) years from the date of contract execution, with the option of renewing at the end of this period.

ARTICLE II – TIME OF BEGINNING AND COMPLETION

- A. The CONSULTANT agrees to start work on the professional services outlined under ARTICLE 1 of this AGREEMENT upon either of the following:
1. CITY MANAGER, CITY PLANNER, or PUBLIC WORKS DIRECTOR notifies CONSULTANT of assignment by email, phone, or verbally. If CITY MANAGER/CITY PLANNER/PUBLIC WORKS DIRECTOR notifies CONSULTANT by phone or verbally, CONSULTANT shall confirm understanding of assignment by email, and CITY MANAGER/CITY PLANNER/PUBLIC WORKS DIRECTOR shall reply with confirmation and notice to proceed.
- B. Any request for work by the CITY made prior to the completion date of this AGREEMENT will be covered by this AGREEMENT.



ARTICLE III – PAYMENT

For services performed by the CONSULTANT as provided for under this AGREEMENT, and as full and complete compensation thereof, including all expenditures made and all expenses incurred by the CONSULTANT in connection with this AGREEMENT, except as otherwise expressly provided herein, subject to and in conformity with all provisions of this AGREEMENT, the CITY will pay the CONSULTANT a fee based on applicable unit prices listed in the attached Terms and Conditions:

Rates:

Principal.....	\$180.00 - \$200.00 per Hour
Engineer/Planner.....	\$98.00 - \$175.00 per Hour
GIS Professional.....	\$120.00 per Hour
Designer.....	\$82.00 - \$117.00 per Hour
Surveyor.....	\$93.00 - \$130.00 per Hour
Survey Crew (1-Person)	\$90.00 per Hour
Survey Crew (2-Person)	\$140.00 per Hour
Survey Crew (3-Person)	\$180.00 per Hour
Survey Crew (Overtime, Holidays – 2-Person)	\$180.00 per Hour
Survey Crew (Overtime, Holidays – 3-Person)	\$220.00 per Hour
Survey Per Diem.....	\$150.00 per person per Night
Administrative Support.....	\$60.00 per Hour

Sain reserves the right to raise rates up to a maximum of 5% at the end of each calendar year. Sain will provide 60 days written notice if it intends to increase the hourly rates at the end of the year.

Reimbursable Expenses

Printing, contract carrier service, and travel expenses are not included within our basic fee and will be passed along to you at our cost, plus 10%.

Payment

To be made monthly based upon the percentage of work completed and invoiced to you. Your obligation to pay for services rendered hereunder is in no way dependent upon your ability to obtain financing, to obtain payment from a third party, or to obtain approval of any governmental or regulatory agencies, or upon your successful completion of the project. If any payment due for services and expenses hereunder is not made in full within thirty (30) days after receipt of invoice, the amounts due Sain Associates, Inc., shall include a charge at the rate of 1½% per month from said thirtieth (30th) day, plus attorney’s fees for collection in the amount of 1/3 of the outstanding balance or such greater amount as the court finds reasonable. In addition, we reserve the right to suspend services under this agreement until receipt of payment in full for all amounts due for services rendered and expenses incurred.

AL Immigration Law Compliance

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting there from.

Standard of Care

The standard of care for all professional services performed or furnished by Sain Associates under this Agreement will be the skill and care used by members of Consultant’s profession practicing under similar circumstances at the same time and in the same locality. Sain makes no warranties, express or implied, under this Agreement or otherwise, in connection with Sain’s services.



Responsibility of the Client

Client shall provide all criteria and full information as to its requirements for the Project, including budgetary limitations.

Schedules, Budgets and Estimates or Opinions of Cost

Any schedules or completion dates, budgets, or estimates of cost prepared by Consultant represent Consultant's professional judgment based on its experience and available information. Since neither Consultant nor Client has control over: the cost of labor, materials, or equipment, or contractor's methods of determining prices; competitive bidding or market conditions; utility conflicts or right-of-way acquisition; agency approval times or actions of a Consultant Program Manager not employed by Sain, the Consultant cannot and does not warrant or represent that actual schedules, budgets or completion dates or actual costs will not vary from schedules or completion dates, budgets or estimates of cost prepared by Consultant or proposed, established, or approved by Client.

Jobsite Safety/Construction Phase Services

The Contractor has sole responsibility for jobsite safety and construction means and methods, not the design professional. The Consultant/design professional is not responsible for the acts or omissions of any contractor, subcontractor or material supplier.

Use of Electronic Media

Copies of documents that may be relied upon by the Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic media format or text, data, graphic or other types that are furnished by Consultant to Client are only for convenience of the Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format, Consultant makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application, operating systems or computer hardware differing from those in use by Consultant at the beginning of this assignment.

Limitation of Remedies

Liability of remedies of Sain Associates, Inc. resulting from errors, omissions, or the negligence of Sain Associates, Inc., its agents or employees, pursuant to work under this agreement shall not exceed the lesser of the value of engineering or surveying services required to correct the deficiency or the basic consulting fee for work covered hereunder or the actual cost of the remedies. This provision is being agreed to as a result of the fees being charged.

Dispute Resolution

Client and Sain Associates agree that if a dispute arises out of or relates to this contract, the parties will attempt to settle the dispute through good faith negotiations. If direct negotiations do not resolve the dispute, the parties agree to endeavor to settle the dispute by mediation prior to the initiation of any legal action unless delay in initiating legal action would irrevocably prejudice one of the parties. Mediation to take place in County where project is located and if mediation cannot be agreed upon by parties then it is agreed that AAA (American Arbitration Association) will appoint mediator.

Indemnification

Client and Consultant each agree to indemnify and hold the other harmless, and their respective officers, employees, agents and representatives, from and against liability for all claims, losses, damages and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of Client and Consultant, they shall be borne by each party in proportion to its negligence.

Force Majeure

Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its negligence.



Termination of Contract

Client may terminate this Agreement with seven days prior written notice to Consultant for convenience or cause. Consultant may terminate this Agreement for cause with seven days prior written notice to Client. Failure of Client to make payments when due shall be cause for suspension of services or, ultimately, termination, unless and until Consultant has been paid in full all amounts due for services, expenses and other related charges.

Ownership of Documents

All documents prepared or furnished by Consultant pursuant to this Agreement are instruments of Consultant's professional service, and Consultant shall retain an ownership and property interest therein. Consultant grants Client a license to use instruments of Consultant's professional service for the purpose of constructing, occupying and maintaining the Project. Reuse or modification of any such documents by Client, without Consultant's written permission, shall be at Client's sole risk, and Client agrees to indemnify and hold Consultant harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by Client or by others acting through Client.

Schedule 2020

APPROVED BY:

SAIN ASSOCIATES, INC.



Alicia Bailey, P.E.
Principal/Owner
AL Reg #26339

ACCEPTED BY:

CITY OF MOUNTAIN BROOK

BY: _____

TITLE: _____

DATE: _____



Becky White, PTP
Principal/Owner



RESOLUTION NO. 2020-118

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby awards the bid for utility street cut repair services to Glenn Contracting and Paving, Co., Inc. ("Contractor"), being the low bidder.

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the Mayor or City Manger are hereby authorized to execute a 3-year contract in the form as attached hereto as Exhibit A, for same.

ADOPTED: This 27th day of July, 2020.

Council President

APPROVED: This 27th day of July, 2020.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on July 27, 2020, as same appears in the minutes of record of said meeting.

City Clerk



Steve Boone <boones@mtnbrook.org>

Utility Cut Bids

1 message

Ronald Vaughn <vaughnr@mtnbrook.org>

Mon, Jul 20, 2020 at 4:35 PM

To: Sam Gaston <gastons@mtnbrook.org>, Steve Boone <boones@mtnbrook.org>, Janet Forbes <forbesj@mtnbrook.org>

Bids were solicited for the City of Mountain Brook's Street Cut Repair Project, B-20200624-663 by the Public Works Department. All bids were opened and publicly reviewed on July 8, 2020. Please find attached the bid tabulations for the Street Cuts.

I am recommending we award the Street Cut contract to Glenn Contracting and Paving Co., Inc. Chris Glenn has agreed to lower his asphalt per square yard price to \$275.00 and will be scanning me a Bid Response Form with that correction and his initials tomorrow. I will forward the updated form when I receive it.

Thanks

 [2020 Bid Tabulation_Street Cut Repair Project.xlsx](#)**Ronnie Vaughn**

Public Works Director
City of Mountain Brook AL
3579 East Street
Birmingham , Alabama 35243
205.802.3865 Office
205.967.2631 Fax
vaughnr@mtnbrook.org

2020 Bid Tabulation for Street Striping Project
Three Year Contract
July 8, 2020

HIGHWAY MANAGEMENT SYSTEMS INC

<u>DESCRIPTION</u>	<u>UNIT</u>	<u>Annual Quantities</u>	<u>UNIT BID</u>	<u>AMOUNT</u>
Solid Yellow, Class A Type 1 Traffic Stripe	Miles	50	\$850.00	\$42,500.00
Solid White, Class A, Type 1 Traffic Stripe	Miles	50	\$850.00	\$42,500.00
Raised Reflective Traffic Markers	Each	6,000	\$6.00	\$36,000.00
Thermo Plastic 24" Wide, White	Sq. Ft.	14,000	\$5.50	\$77,000.00
Thermo Plastic 8" Wide, White	Sq. Ft.	4,000	\$5.50	\$22,000.00
Thermo Plastic Turn Arrows, White	Each	100	\$100.00	\$10,000.00
Thermo Plastic Centerline, Yellow	Linear Ft.	200,000	\$0.75	\$150,000.00
Thermo Plastic Side Lines, White	Linear Ft.	100,000	\$0.75	\$75,000.00
<u>TOTAL AMOUNT BID</u>				\$455,000.00

OZARK STRIPING COMPANY, INC

<u>DESCRIPTION</u>	<u>UNIT</u>	<u>Annual Quantities</u>	<u>UNIT BID</u>	<u>AMOUNT</u>
Solid Yellow, Class A Type 1 Traffic Stripe	Miles	50	\$780.00	\$39,000.00
Solid White, Class A, Type 1 Traffic Stripe	Miles	50	\$780.00	\$39,000.00
Raised Reflective Traffic Markers	Each	6,000	\$5.50	\$33,000.00
Thermo Plastic 24" Wide, White	Sq. Ft.	14,000	\$5.00	\$70,000.00
Thermo Plastic 8" Wide, White	Sq. Ft.	4,000	\$5.00	\$20,000.00
Thermo Plastic Turn Arrows, White	Each	100	\$100.00	\$10,000.00
Thermo Plastic Centerline, Yellow	Linear Ft.	200,000	\$0.75	\$150,000.00
Thermo Plastic Side Lines, White	Linear Ft.	100,000	\$0.75	\$75,000.00
<u>TOTAL AMOUNT BID</u>				\$436,000.00 *Special Notes

EXHIBIT C - STREET CUT REPAIR PROJECT 2020 CONTRACT

This **Street Cut Repair Project 2020 Contract** (the "Contract") is made by and between Glenn Contracting and Paving Co., Inc. (the "Contractor") and the **City of Mountain Brook, Alabama** (the "City") effective as of the date last signed below by a party (the "Effective Date").

WHEREAS, on Project B-20200624-663 the City has conducted a competitive bid process to award a three-year unit price contract in connection with perform operations to repair cuts in asphalt and concrete streets and other paved areas in the City (the "Work" or "Project");

WHEREAS, the City has determined Contractor to be the lowest responsible bidder in response to its Invitation for Bids for the Project issued on or about June 24, 2020;

WHEREAS, Contractor agrees to perform the Work in compliance with all Contract Documents in the Project Manual (including the Specifications & Conditions and the Contractor Bid Response Form), which documents are incorporated by reference and collectively may be referenced herein as the "Contract Documents"; and

WHEREAS, the City and Contractor deem it desirable to memorialize the terms and conditions of this Contract.

NOW, THEREFORE, in consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the Contractor and City agree as follows:

1. **Work.** Contractor shall perform the Work in accordance with the terms, provisions and conditions of the Contract Documents (including the Specifications & Conditions) and this Contract. The Contractor's Bid Response Form is also incorporated herein and made a part hereof by reference. The Contractor will be compensated for performing the Work at the prices set forth in the Contractor Bid Response Form.

2. **Term/Early Termination.** The term of this Contract shall commence on August 1, 2020, and thereafter continue in effect for a period of three (3) years (the "Term"). Notwithstanding the provision immediately above or any other provision herein or in the Specifications, the Contract may be terminated before the expiration of its Term on the occurrence of any of the following:

- (a) **Termination for Cause by City.** If the Contractor fails to perform any material obligation as required in the Specifications or this Contract (a "Default"), the City may terminate the Contract for cause on thirty (30) days' advance written notice to Contractor; provided that the Contractor shall have a reasonable opportunity to cure or correct any deficiency in performance that is the basis of the proposed termination for cause. This termination remedy is in addition to any other remedy or right provided to the City in the Contract or available by law that arises from a Default. The circumstances that may constitute a Default by the Contractor include, but are not limited to the following: (i) its failure to perform the Work in a satisfactory manner; (ii) its failure to perform the Work in a timely manner; (iii) the accumulation of substantial evidence that the progress being made by the Contractor is insufficient to complete the Work within the specified time; (iv) the deliberate failure on the part of the Contractor to proceed with the construction of the work when so instructed by the City or to observe any requirements of the Specifications; and (v) the Contractor's failure to promptly make good any defects in materials or construction that may be called to its attention by the City; and

- (b) Termination for Cause by Contractor. If the City does not perform a material obligation in the Specifications or in this Contract, the Contractor may terminate the Contract for cause on thirty (30) days' advance written notice to the City; provided that the City shall have a reasonable opportunity to cure or correct any deficiency in performance that is the basis of the proposed termination for cause; and
- (c) Termination for Non-Appropriation. Notwithstanding any other provision above in this section or elsewhere in this Contract, the City, effective upon provision of written notice to Contractor, may terminate this Agreement at the end of the first or second contract year without cause or the occurrence of a Default and without any liability, penalty or obligation to pay for Work after the effective date of termination if its governing body does not appropriate or allocate funds for the Project. In the event of such termination for non-appropriation, the City shall remain obligated to pay for Work performed by the Contractor prior to termination.

In the event a Contractor Default occurs and the Contract is terminated, Contractor shall discontinue its operations to perform the Work. Moreover, the City, in addition to exercising its right to terminate this Contract, may have the Work completed by another contractor(s), in which event Contractor shall be responsible for the difference, if any, between the amount paid by the City to another contractor to complete the Work and that provided for hereunder as the cost of the Work if it were performed by the Contractor. No failure on the part of the City to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof.

3. Payment to Contractor. The amounts to be paid to Contractor shall be calculated and based on the unit prices set forth in its completed Contractor Bid Response Form, which Form is incorporated by reference herein.

4. Project Representatives. Each party shall appoint a representative(s) who shall coordinate with the other party on matters pertinent to the performance of the Work and the administration of this Contract (the "Project Representative(s)").

The City's Project Representative is:

Hunter Johnston, Public Works Dept.
3579 East Street.
Mountain Brook, AL 35243
Email: johnstonh@mtnbrook.org
Tel No: 205-802-3875

The Contractor's Project Representative is:

Chris Glenn
3687 Cahaba Beach Road
Birmingham, AL 35242
Email: glenncontracting@bellsouth.net
205-991-0194

The Project Representatives designated above shall have the authority to act on behalf of its respective organization to transmit instructions, receive information and administer the Contract consistent with its terms and conditions. Either party may designate a Project Representative other than the person named above upon provision of written notice to the other.

5. Notices. Any notice required hereunder shall be sufficiently given when given in writing and sent to the appropriate Project Representatives via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to that party.

6. Dispute Resolution. The Project Representatives of the parties will use their good faith efforts to resolve any dispute or claim between them arising from the performance or failure to perform their respective obligations under this Agreement (a "Dispute"). If those Representatives are unable to amicably resolve a Dispute, it will be escalated to the senior manager/official level of each party for consideration. If the Dispute cannot be resolved at the senior official level, either party may request that the Dispute be mediated.

However, if the parties are unable to amicably resolve any Dispute, the dispute resolution mechanism for any claim between the parties shall be litigation in a court located in Jefferson County, Alabama. If (i) the City should employ attorneys or incur other expenses in any legal action regarding a Dispute, and (ii) the City secures a final judgment before a court of competent jurisdiction or obtains other relief from an administrative body related thereto against the City, the Contractor will reimburse the City for its reasonable attorneys' fees and other reasonable expenses that are incurred in that action.

7. Indemnification by Contractor/Insurance Requirements

(a) Indemnification. The Contractor agrees to defend, indemnify, and hold harmless the City of Mountain Brook, and its agents, employees and officials (hereinafter the "Indemnitees") from and against from and against all demands, actions, damages, judgments, expenses (including, but not limited to, attorneys' fees, expert fees, court costs and other litigation costs), losses, damages, and claims (including those for bodily injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property, or those for financial loss or damages) (collectively herein "Claim(s)") by any third parties (including any employee, subcontractor or representative of the Contractor, hereafter a "Contractor Representative") asserted against any Indemnitee(s) that arise out of, relate to, result from, or are attributable to any of the following: (a) any conditions in or about the work sites on which the Contractor or any Contractor Representative may enter or encounter in performing the Work; and (b) any negligent act, omission or conduct by the Contractor or any Contractor Representative that arises from or relates to its (or their) performance or failure to perform its (or their) responsibilities under this Contract or the Work. This indemnification obligation includes Claims by third parties that are caused in part by the negligence of an Indemnitee; provided, nothing herein shall obligate the Contractor to indemnify any of the Indemnitees for Claims resulting from the sole negligence or from the willful misconduct of the Indemnitees.

(b) Insurance Requirements. The Contractor shall maintain the following types of insurance for the duration of this Contract and for limits not less than stated below:

(i) Comprehensive General Liability for all operations performed by or on behalf of the Contractor or any Contractor Representative related to or arising from the performance of the Work or Project contemplated in the Contract, with limits of not less than

- \$1,000,000 combined single limit and aggregate for bodily injury (excluding auto) and property damage (excluding auto), per occurrence; and
- Excess umbrella coverage of \$1,000,000.00 for each occurrence

This insurance shall include coverage for assumed contractual liability; completed operations; damages to third parties for personal injury (including death) and property damage; and damage, destruction and injury to City property and City personnel caused by or resulting from the operations of the Contractor and any Contractor Representative;

(iii) Automobile Liability of not less than \$1,000,000 with excess umbrella coverage of \$1,000,000.00 for each occurrence. This insurance shall cover any owned or rented vehicles or equipment utilized for the Project;

(iv) Workers' Compensation as required by statute; and

(v) Employer's Liability – liability limits of \$500,000 per occurrence.

All required insurance shall be provided by a policy(ies) issued by a company or companies qualified to engage in the insurance business in the State of Alabama with a rating reasonably acceptable to the City. These insurance requirements are in addition to and do not affect any indemnification obligation of the Contractor herein.

Except for the Workers Compensation and Employer's Liability coverage, all coverage shall contain endorsements naming the City of Mountain Brook, and its officers, employees and agents, as additional insureds with respect to liabilities that arise out of and result from the operations of the Contractor or the performance of the Work. Before the commencement of the Work hereunder, the Contractor shall provide the City a certificate(s) of insurance and endorsements (including the additional insured endorsements) evidencing compliance with the requirements in this section.

8. Safety. Contractor exclusively shall be responsible for traffic control, the safety of its personnel (and that of any subcontractor or subcontractor personnel), the protection of its equipment and the protection of the Work while performing its operations on or about the City streets and property (the "Work Sites"). In addition, Contractor shall undertake whatever precautions and practices that it determines are necessary (including, but not limited to, the posting of signs warning against hazards, use of flagmen, etc.) to maintain a safe work environment and at all times to protect the general public, its personnel, its equipment, City personnel and City property from injury, damage or loss in the course of its operations.

The City makes no representation and gives no warranty that its Work Sites (or any equipment or improvements thereon) are safe or fit for the performance of the Work. Prior to commencing its operations, Contractor (and its representatives) agree to thoroughly examine, inspect and become familiar with each Site, determine that the Work at each such Site can be completed in an orderly and safe manner and implement whatever precautions, practices or actions that it deems are required to safely the Work in those locations.

9. Representations of Contractor. As further inducement to enter this Contract, the Contractor represents and warrants each of the following to the City:

- (a) that it will perform the Work in a good and workmanlike manner;
- (b) that, prior to entering this Contract, it has familiarized itself with the general conditions and nature the Work sites where it will perform operations; and
- (c) that all actions required to be taken by it or on its behalf to execute the Contract, and to perform its obligations and agreements hereunder, have been duly taken.

10. Entire Agreement/Ineffective Provisions in Contractor Documents. This Contract and the other Contract Documents comprise the entire agreement between the parties concerning the matters herein. These terms, provisions and conditions in the Contract supersede all prior negotiations, representations or agreements, either written or oral, concerning the subjects herein, and any such prior understandings concerning these matters are of no effect and are merged into this Contract. Further, the parties agree that no terms, provisions or conditions that are stated in any work or purchase order, proposed invoice or other document generated by the Contractor in connection with the Work are not incorporated into or form part of the Contract. Notwithstanding the existence of any such documents, the parties understand, agree and covenant as follows:

- (a) The City shall not be liable to the Contractor for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs, and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor;

(b) The City shall not be liable for any late payment charges, interest, or fees on any delinquent billing for goods, materials, or services;

(c) The City will not indemnify, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the Contract or the performance or nonperformance thereof; and

(d) Unless expressly stated in the Contract, the City does not waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Contractor or any person, firm, or entity in privity therewith or acting on Contractor's behalf in connection with the performance of the Work. Any limitation or restriction regarding the type, nature, form, amount, or extent of any right, remedy, relief, or recovery that would otherwise be available to the City (or the City) is expressly disavowed, excluded from the terms of the Contract, and void.

11. No Assignment or Subcontracting Without Consent. Except as expressly authorized herein, Contractor may not assign, transfer, convey, sublet or otherwise transfer or dispose of any of its rights, obligations, responsibilities or interest therein to any other person, firm or corporation without the prior written consent of the City, which may be withheld for any reason. Unless expressly agreed to the contrary, in no event shall such consent relieve the contractor from its obligations to the City hereunder or change the terms of the Contract. Further, if a subcontractor is approved and performs Work contemplated by this Contract, the Contractor shall remain responsible to the City for the actions, conduct and performance of the subcontractor (and any of its agents, employees or representatives), and any work performed by a subcontractor shall be considered as having been rendered by the Contractor and directly provided by it.

12. Miscellaneous Provisions.

(a) During the Term of this Contract, Company agrees to comply with all federal, state and local laws, regulations and codes applicable to the performance of the Work (collectively, "Laws"), including, but not limited to, Laws concerning the safety, inspection, maintenance, and operation of its equipment, employment laws related to its personnel, Occupational Safety Health & Administration (OSHA) regulations or other requirements intended to protect the safety of workers, Laws intended to protect the public, or Laws intended to protect the quality of air, water or environment. The requirements of these Laws shall be construed as the minimum requirements of the Contract.

(b) The Contractor is an independent contractor of the City. This Contract does not create any partnership, joint venture or principal-agent relationship between the Contractor and the City. Further, Contractor (and its employees, representatives or subcontractors) exclusively controls the means and methods it uses or selects to perform the Work, and the City retains no control or authority with respect to those means and methods.

(c) The Contractor may not assign this Contract, or any of its rights, obligations or the benefits hereunder, to any other party without prior written approval of the City, which approval may be withheld for any reason. In no event will this Contract be assigned to an unsuccessful bidder who was rejected because it was not a responsive or responsible bidder.

(d) The Contract is made only for the benefit of the City and the Contractor. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

(e) At its expense, Contractor shall secure and maintain throughout the Term of this Contract all licenses, permits and governmental approvals required to perform the Work which Contractor is obligated to perform hereunder.

(f) This Contract may be amended or modified only by written instrument signed by both parties. Further, neither the scope of Work nor the time of completion of Work operations may be changed except in accordance with the terms of a written change order signed by City and Contractor.

(g) This Contract may be executed in counterparts each of which when executed by the parties shall be deemed to be a complete original. Copies of this Contract showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals, and shall have the same legal force and effect as an original document.

(h) Any forbearance or delay on the part of the City in enforcing any of its rights under this Contract shall not be construed as a waiver of those rights. No terms of this Contract shall be waived by the City unless expressly waived in writing.

(i) If any provision of this Contract is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of it shall remain in full force and effect.

(j) In the event of a conflict between any term or provision in this Contract and those in any other Contract Document, the provisions in this Contract shall control and govern.

(k) **Exclusion of Consequential Damages.** NOTWITHSTANDING ANY OTHER PROVISION IN THIS CONTRACT, THE CONTRACTOR AGREES THAT, IN THE EVENT IT MAKES OR ASSERTS ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE CITY ARISING FROM ITS ALLEGED BREACH OF THIS CONTRACT OR ITS FAILURE TO PERFORM ANY OF ITS OBLIGATIONS HEREUNDER, THE MAXIMUM AMOUNT THAT THE CONTRACTOR MAY RECOVER FROM THE CITY AS DAMAGES IN ANY SUCH ACTION IS LIMITED TO THE CONTRACTOR'S ACTUAL, DIRECT DAMAGES ARISING FROM THE CITY'S BREACH. THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT THE TERMS IN THIS PROVISION WERE PROPOSED AND BASED ON THE ASSUMPTION THAT THIS SPECIFIC LIMITATION IS APPLICABLE, AND THAT THE CITY WOULD NOT HAVE ENTERED INTO THIS CONTRACT WITHOUT THE INCLUSION OF THIS LIMITATION. IN NO EVENT WILL THE CITY BE LIABLE TO THE CONTRACTOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOST ADVANTAGE, LOST OPPORTUNITY, LOSS OF SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS) ARISING FROM ANY BREACH OR ALLEGED BREACH OF THIS AGREEMENT BY THE CITY.

(l) **Choice of Law.** The meaning, legal effect, and enforcement of terms and provisions of the Contract and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama, except to the extent otherwise required by applicable conflict-of-law principles.

(m) **Construction.** Except as expressly stated herein, nothing in this Contract shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity. Furthermore, in the event that any ambiguity in the terms of this Contract is determined to exist, no presumption shall be made that either of the parties drafted the Contract.

(n) **Immigration Law Compliance.** The Contractor represents and warrants that (a) it does not knowingly employ, hire for employment, or continue to employ an "unauthorized alien," as defined by the *Beason-Hammon Alabama Taxpayer and Citizen Protection Act*, Act No. 2011-535 (H. B. 56), as amended from time to time (the "Act") and that, during the performance of this Agreement, it shall participate in the E-Verify program as required under the terms of the Act; (b) it will comply with all applicable provisions of the Act with respect to its contractors by entering into an agreement with or by obtaining an affidavit from such contractors providing that such contractors are in compliance with the Act with respect to their participation in the E-verify program; and (c) it shall not hire, retain or contract with any contractor that it knows is not in compliance with the Act. The Contractor further agrees and warrants

that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, in its hiring and employment practices, and that if it receives actual knowledge of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from the Project, jobsite or premises of the City and shall require each of its subcontractors, or other parties with whom it has a contract, to act in a similar fashion. If the Contractor violates any term of this paragraph, this Contract will be subject to immediate termination by the City. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the City from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Contractor's failure to fulfill its obligations contained in this paragraph.

(o) **City Audit Right/Contractor's Retention of Records.** Upon reasonable advance notice from the City during the course of performing the Work or in a periodic audit that follows the completion of part of all of that Work, Contractor, at its expense, agrees to produce for inspection those records maintained by it with respect to the Work for the City to evaluate whether the Contractor has properly completed, accounted and performed the transactions that are contemplated hereunder. To facilitate any such inspection or audit, the Contractor agrees that, for a period of no less than (2) years following the performance of its Work or the expiration (or earlier termination) of this Contract, it will maintain its reports, logs and records concerning its performance of Work, and the accounting, billing or other financial records that the Contractor generates regarding same.

In Witness Whereof the undersigned, duly authorized representatives of the parties have executed this Contract on behalf of their respective organization.

ATTEST

CONTRACTOR: Glenn Contracting and Paving Co., Inc.

By: _____

By: _____

Its: _____

Its: _____

Date: _____

ATTEST

CITY OF MOUNTAIN BROOK, ALABAMA

By: _____

By: Stewart H. Welch, III

Its: _____

Its: Mayor

Date: _____

II. SPECIFICATIONS & CONDITIONS

1. GENERAL SCOPE

The successful contractor ("Contractor" or "contractor") shall perform all operations related to repairing cuts in asphalt and concrete streets and other paved areas in the City of Mountain Brook ("City") that are made by utilities, contractors or other persons or entities (the "Work" or "Project"). The contractor is responsible to furnish all labor, personnel, materials, supplies, equipment, fuel, tools, and personnel to complete this Work at locations that are selected by the City in compliance with the Specifications & Conditions and other Contract Documents. The contractor will be compensated on a unit price basis at prices that will remain constant over three-year period of the anticipated contract. The City estimates that, during each year of this contract, the contractor will repair a total of approximately 1000 square yards of cuts (the "Estimated Quantities").

2. SPECIAL CONDITIONS

- A. Length of Contract. The City will award a three (3) year contract that will become effective August 1, 2020.
- B. Asphalt Cut Repairs. The repair of asphalt cuts shall consist of squaring of sides and edges and installing six (6") inches of binder asphalt on a compact sub-grade and a one (1") inch asphalt seal course.
- C. Concrete Cut Repairs. All concrete repairs shall be the same thickness as adjoining concrete, using 3,000 lb. P.S.I. concrete. Concrete shall be ochre in color.
- D. Traffic Control: The Contractor is exclusively responsible for all traffic control related to the performance of the Work. This responsibility includes, without limitation, determining and implementing all appropriate measures to place signs, warn drivers, pedestrians and others affected by the Work, and utilize flag persons.
- E. Estimated Quantities. The Estimated Quantities stated above, on the Bid Response Form and elsewhere in the Contract Documents are the City's good faith approximations of the scope of Work that is believed to be required during each year of the contract. The City anticipates, but does not guarantee, that these quantities of Work will be ordered or required. These estimates are given for the sole purpose of receiving unit price bids and awarding the contemplated contract. The City does not warrant the accuracy of these estimates and approximations, that these quantities will be required to complete the Work, or that the successful contractor will receive any minimum amount of compensation based on these estimates.
- F. Unit Prices Constant During Term of Contract. The Unit Prices entered by the successful Contractor on its Bid Response Form (which is included herein) will remain constant throughout each year of the contemplated Contract.
- G. Increases or Decreases in Work. The City reserves the right to increase or decrease the Estimated Quantities in the Contract Documents without penalty, and except as provided in the specifications, any such increase or decrease in quantities will not change the unit prices over the term of the contract. If the actual quantities of Work performed deviate from the Estimated Quantities, no allowance will be made to Contractor for any change in anticipated profits, nor shall such changes be considered as waiving or invalidating any conditions or provisions of the Contract.
- H. Requests for Work. The City may request Work on an as-needed basis at locations selected by it. The City will request any such Work by issuing a notice to proceed.

- I. **Time for Performance of Work.** Unless otherwise agreed, Contractor shall complete all Work with respect any particular location(s) designated by the City within fourteen (14) days after issuance of notice to perform operations there.
- J. **Liquidated Damages.** If Contractor does not timely complete its Work on a specified location after receiving a notice to perform, the Contractor agrees that the City may deduct the amount below from any monies that are otherwise payable the Contractor under the contract:

\$100.00 per day until Work at specified location(s) is substantially complete

(the above amount being referenced as “Liquidated Damages”). The Contractor and City agree that calculating the actual damages that will flow from Contractor’s failure to timely complete the Work would be difficult to estimate or prove. Therefore, the parties agree that the above Liquidated Damages amounts (a) are designed to compensate the City for the Contractor’s failure to timely perform the Work, (b) are not penalties or intended as punishment, and (c) are intended to compensate the City for its inconvenience and the increased time in administrating the Contract, supervision, inspection and engineering which is required for any operation or phase of the Project that is not completed within the time contemplated. Moreover, if the City permits the Contractor to continue and finish the Work (or any part of it) after the time for performance has expired, the performance of that delayed work will not waive, diminish or impact the City’s rights under the contemplated contract to deduct Liquidated Damages.

- K. **Payment.** The City will pay Contractor for the Work based on the unit prices in its Bid Response Form and the actual quantity of Work supplied and operations furnished by it in accordance with the Specifications & Conditions. Additionally, the following understandings apply with respect to those payments:

(i) the City’s Project Representative shall determine the quantities of Work acceptably completed based on measurements taken by him or his assistants. These determinations will be calculated according to United States standard measurements;

(ii) the compensation paid to the contractor will constitute full payment for all of the following: it furnishing all labor, materials, tools, equipment and incidentals; it performing all work contemplated and embraced under the contract; for any loss or damage arising out of the Work or its elements; for any unforeseen defects or obstructions which may arise during the prosecution of the Work and before its final acceptance by the City; for all risks connected with the prosecution of the Work; for all expense incurred by the contractor or in consequence of suspension or discontinuance of such prosecution of the Work; and for completing the work in an acceptable manner according to the Specifications & Conditions and the Contract Documents;

(iii) Any materials or Work covered by partial estimates shall, upon payment, become the sole property of the City; however, the City’s payment of any partial or periodical estimates prior to final acceptance of the work shall in no way constitute an acknowledgment of the acceptance of the work nor in any way prejudice or effect the obligation of the contractor to repair, correct, renew or replace, at its expense, any defects or imperfections in the construction or in quality of the materials used in the construction of the Work;

(iv) Invoices. Upon completion of Work at a location(s), the Contractor will prepare and submit an invoice indicating the quantities of work completed at each location(s) and stating the total amount due for each location(s). The City will review the invoice and, if the Work is properly completed, pay the Contractor for the Work performed at a location(s) within thirty (30) days of the date of invoice.

(v) All pay requests will be certified as correct by the City Project Representative and approved by the City before payment.

- L. **Warranty:** Contractor warrants the fitness and soundness of all workmanship and materials for a period of one hundred twenty (120) days after the completion of the Work (or part thereof). This warranty period shall begin on the date of final estimate payment to the Contractor by the City with respect to the Work in question. At its expense, Contractor shall (i) replace or repair all defective materials, (ii) make good all defective workmanship, and (iii) remove and replace any Work that is not performed in conformity with the Specifications and Condition to the reasonable satisfaction of the City. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom within this period. The City will give notice of observed defects with reasonable promptness. Defective materials shall be removed immediately from the site of the work.

None of the following shall relieve the Contractor of liability or responsibility with respect to this warranty or responsibility for to replace or repair faulty materials or workmanship: (a) the issuance or a final certificate of payment with respect to a location, (b) any provision in the Contract Documents, or (c) the City's partial or entire use of any Work site.

- M. **Quality of Materials.** All materials furnished for the Work shall be new and unused and of recent manufacture. Only materials that conform to the requirements of the Specifications herein and are customarily used on projects of this nature shall be used in the Work, and such materials shall be used only after approval has been given by the City Project Representative.

3. GENERAL CONDITIONS

A. Bidder's Obligations to Examine Contract Documents. Bidders are advised that the Contract Documents constitute all the information that the City will furnish and that is applicable to the Project. No other information furnished verbally or otherwise by the City (or any of its representatives) prior to the execution of the Contract shall become a part of or change the Contract. Prior to submitting their bid, bidders are presumed to have carefully (a) read the Contract Documents (including the Specification and Conditions); (b) generally familiarized itself with the sites of the Work ("Work Site(s)"); (c) examined local conditions; and (d) determined for themselves by their independent research any difficulties to be encountered the accessibility of the Work, attending circumstances affecting the cost of performing it, the time required for its completion and considered all information required to make its proposal. Further, Bidders shall rely exclusively upon their own estimates, investigations and other data which they deem necessary for submitting a proposal. City may assume that, by making a proposal, the bidder has made these examinations and investigations.

B. Intent of Contract Documents. The intent of the Specifications and other Contract Documents is to prescribe a complete scope of work and responsibilities that the Contractor undertakes to do in full compliance with the Contract. The Contractor shall do all work as provided in the Contract, and shall do such additional, extra and incidental work as may be considered necessary to complete the work in a satisfactory and acceptable manner. Any work or material not shown on the Specifications or Conditions but which may be fairly implied as included in any item of the Contract shall be performed and/or furnished by the Contractor without additional charge thereof.

C. Contract/Contract Documents. As used herein, the term "Contract" (or "contract") refers to the written agreement between the City and the successful Contractor for the performance of the Work. The Contract includes all the following documents and any approved addenda and change orders thereto: Invitation to Bid; Specifications & Conditions (including the Special Conditions and General Conditions for the Project); Instructions to Bidders (with EXHIBIT A - Contractor Bid Response Form, and EXHIBIT B - Bidder Qualification Form); and Contractor Qualifications/Requirements for Award Contract Award Process (with EXHIBIT C - Street Cut Repair Project 2020 Contract) (collectively, the "Contract Documents").

In the event of any conflict between the terms, provisions and conditions in the different Contract Documents, the language in the document in the order below shall take govern and control: (1) Street Cut Repair Project 2020 Contract; (2) Special Conditions; and (3) General Conditions.

D. Clean Up.

(i) Throughout the progress of the Work Contractor shall keep the work area (including any storage areas used by it) free from accumulation of waste material or rubbish, and shall keep his materials and equipment in a neat and orderly manner. Immediately upon completion of any section of the work and before payment therefore has been made, contractor shall remove from the site all construction equipment, temporary structures, and debris and shall restore the site to a neat, workmanlike condition. Waste material shall be disposed of at commercially reasonable locations selected by the contractor.

(ii) Where the contractor has performed work on, or has made use of, private property for storage of materials or for other purposes, it shall obtain a satisfactory release from the owner of said property after completing the work and removing all materials and equipment therefrom.

(iii) After completion of all work and before final cleanup of the site of each separate part of the Work; contractor shall restore all surfaces to a neat and orderly condition; and shall remove all construction equipment, tools and supplies therefrom.

E. Supervision. Contractor exclusively shall be responsible for supervising all Work. Notwithstanding, during the course of its performance, the City Project Representative may, but is not obligated, provide input to the Contractor Project Representative on the following matters: the quality and acceptability of materials furnished; rate of progress of the work; sequence of construction; interpretation of Specifications; compensation; and suspension of work if determined by the City representative to be required for public convenience. The provision of any such input will not excuse Contractor from its failure to comply with the Contract.

F. Conformity with Specifications. All Work shall conform to the Specifications & Conditions for the Project. Any deviation from those Specifications which may be required by the exigencies of construction must be approved by the City Project Representative and authorized by him in writing.

G. City Audit Right/Contractor's Retention of Records. Upon reasonable advance notice from the City during the course of performing any part of the Work or in a periodic audit that follows the completion of all the Work, Contractor, at its expense, agrees to produce for inspection those records maintained by it with respect to the Work for the City to evaluate whether the Contractor has properly completed, accounted and performed the transactions that are contemplated hereunder. To facilitate any such inspection or audit, the Contractor agrees that, for a period of no less than (2) years following the performance of its Work or the expiration (or earlier termination) of this Contract, it will maintain its reports, logs and records concerning its performance of Work, and the accounting, billing or other financial records that the Contractor generates regarding same.

H. Public Utilities. Contractor is exclusively responsible for determining the location of and protecting from damage any gas, water, power, sewer or other utility lines or facilities that are impacted by the Work. Further, if service connections or lines from utilities to a user's premises are disconnected, broken, damaged, or otherwise rendered inoperative for any reason by the contractor in prosecuting the Work, contractor, at its own expense, shall repair or replace same and restore service to the affected premises at the earliest possible time.

If prosecution of the Work requires that any property used by public utilities be cut, moved, relocated, rebuilt, or otherwise disturbed in any way, the contractor shall notify the utility to make the required changes, and, prior to making application to the utility, make all preliminary arrangements with the utility owner, including the scheduling of work. The City shall not be responsible for any delays in the accomplishment of the required changes on utility property by reason of the contractor's failure to schedule the work properly or otherwise, and in no case shall the contractor be allowed any claim for extension of time or additional compensation based on failure of the utility owner to make the needed changes within the stipulated period of time.

I. Inspection. The City Project Representative may inspect all phases of the Work in progress. Contractor shall furnish that Representative with every reasonable facility for ascertaining whether or not the Work as performed is in accordance with the requirements and intent of the Specifications & Conditions. Should any work be covered or hidden prior to the approval thereof by the City's Project Representative, it shall be uncovered for examination at the contractor's expense.

J. Compliance with Laws. The contractor shall, at all times, observe and comply with all Federal and State laws and local ordinances and regulations which in any manner affect the conduct of the work, and shall observe and comply with all orders and decrees which exist at the present or which may be enacted later, or bodies or tribunals having jurisdiction or authority over the work.

K. Licenses. At its expense, the contractor shall procure, and maintain throughout the term of the Contract, all governmental licenses required to perform the work, and provide all notices necessary and incident to lawful prosecution of the work.

L. Patented Devices. Contractor (and the Surety issuing any performance bond) shall indemnify and save harmless the City and its representatives from all and every demand for damages, royalties or fees on any patented

devices, materials and processes used by the Contractor or used in connection with the Work done or material furnished under the contract.

M. Public Convenience and Safety.

(i) Where the work is located in, on or near City streets, alleys, rights-of-way or highways, the contractor shall store construction materials and equipment and perform the work in such a manner as will provide reasonably adequate and satisfactory convenience for the general public and residents affected by the work.

(ii) No street shall be closed without the permission of the City Project Representative and the fire department having jurisdiction.

(iii) Storage of materials and the work shall be arranged so that there will be free access to all fire hydrant, valves, manholes and other utility appurtenances.

(iv) Where the work is located in or adjacent to any street, alley or public place, contractor shall at its own expense furnish and erect such barricades, fences, signs, lights and danger signals and shall provide such watchmen as are required to protect persons, property and the work from injury, damage or loss. Contractor shall be solely responsible for all damages to the third persons or the work due to failure of barricades, signs, lights and watchmen to protect any of them from injury or damage. The Contractor's responsibility to protect the public or work shall not cease until the City has finally accepted the work.

N. License to Use City Streets. During the period the Contractor performs the Work, the City grants a license to occupy such portions of its streets, ways or public property as will not unduly restrict traffic or endanger the public.

O. Use and Restoration of Private Property. Contractor shall not enter upon private property for any purpose without first obtaining permission from its owner. Contractor shall be responsible for the preservation of, and shall use every precaution necessary to prevent damage to, all trees, shrubbery, fences, culverts, bridges, pavement, driveways, sidewalks, etc. and to all water, sewer, gas, telephone, and electric lines thereof, and to all private property along or adjacent to the work.

P. Responsibility for Damage. When and where any direct or indirect injury, loss or damage or injury to public or private property on account of any act, omission, neglect or misconduct in the execution of the Work by the contractor, it shall restore, at its expense, such property to a condition similar or equal to that existing before such damage or injury was done by repairing, rebuilding or otherwise restoring it as may be directed, or it shall duly compensate the property owner for any damage or injury.

Q. Water/Electricity/Gasoline/Supplies. Contractor, at its expense, is responsible to provide and maintain at an adequate supply of any water, power, gasoline or other fuel or supplies required for the Work.

R. Contractor's Responsibility for Claims.

(i) The contractor (and its surety) shall defend, indemnify and save harmless the City (and all its officials, agents, and servants) against any claims of liability arising from or based on the violation of any law, ordinance, regulation, order or decree related to the performance of the Work, whether such violation is committed by contractor, its employees or any of its subcontractors, in the course of performing (or failing to perform obligations hereunder related to) the Work.

(ii) The contractor (and its surety) shall defend, indemnify and save harmless the City (and all its officers, agents and employees) from all suits, actions or claims of any character, name and

description brought for, or on account of any injuries or damages received or sustained by any person, persons or property from any of the following: (a) the contractor's neglect in performing or safeguarding the work; (b) the use of unacceptable materials in performing the work; or (c) by on account of any claim or amounts arising or recovered under the Workmen's Compensation Law or any other law, ordinance, order or decree.

(iii) The contractor guarantees payment of all just claims for materials, supplies, tools, equipment or labor from any subcontractor that performs work for it under the contract.

(iv) Contractor also is responsible to indemnify the City for the claims and matters set forth in Section 7(a) of the prototype Contract that is included in the Contract Documents.

S. Insurance. Contractor is responsible to provide the insurance stipulated in Section 7(b) of the prototype Contract that is included in the Contract Documents.

T. Contractor's Responsible for Work until Accepted. Contractor shall remain responsible for the work at a work site until it is finally accepted by the City Project Representative. All work there shall be under the charge and care of the contractor, and it shall take every necessary precaution to prevent injury or damage to any person from any other cause whatsoever (whether arising from its execution or failure to execute the work) until such acceptance occurs. Further, contractor, at its own expense, shall rebuild, repair, and restore all injuries or damage to any portion of the work occasioned by any cause before acceptance.

U. The parties agrees that, if Contractor is unable to complete the Work (or a part thereof) because of unforeseeable events or matters that are beyond its reasonable control and that do not result from its negligence (for example, strikes, shortages of material, governmental preemption in connection with a national emergency and Acts of God), the time for completing the Work may be extended by the length of time equal to the duration of any such events matters. Such extensions of time shall be considered only when submitted to the City Project Representative in writing within ten (10) days from and after the time when any such alleged cause of delay shall occur.

V. Grounds for Termination of Contract: See Section 2 of prototype Contract that is included in these Contract Documents.

W. No Waiver by City. The City shall not waive any of its rights or powers under the contract by occurrence of the following: any inspection of the work by the City Project Representative (or by any of his duly authorized representatives); the issuance of any order, measurement or certificate by that Representative; any order by the City to pay money; the City's acceptance of any work; or the City's grant of any extension of time to complete work. Further, no waiver of any breach of contract shall be held to be a waiver of any other or subsequent breach.

X. No Assignment or Subcontracting without City's Consent. The contractor shall not assign any benefit, obligation or right under the contract, or subcontract any part of the work to a subcontractor, in whole or part, without prior written consent of the City, which consent may be withheld for any reason. Any authorized subcontracts shall comply with the applicable provisions of the principal contract, and the contractor shall be fully responsible for the acts and omissions of his subcontractors.

Y. Prosecution of Work. In performing the work, the contractor shall

(i) continuously and diligently prosecute the work in such order and manner to complete it in a safe, workmanlike and timely manner;

(ii) exclusively be responsible for training and supervising all of its personnel, and take necessary actions to ensure that that its workmen have sufficient skill and experience to properly perform the work assigned to them;

(iii) comply with all federal, state and local laws, regulations and ordinances governing the employment of labor and the payment of wages thereto for work performed under this contract; and

(iv) furnish an ample force of trained laborers, tools, supplies and equipment that it considers necessary to complete the work at a satisfactory rate of progress.

RESOLUTION NO. 2020-119

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the bid presented by Highway Management Systems, Inc., in the amount of \$455,000 (based on estimated quantities) for the street striping as specified in the invitation to bid is hereby accepted; and

BE IT FURTHER RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the Mayor or City Manager are hereby authorized and directed to execute a [3-year] agreement for said street striping services, in the form as attached hereto as Exhibit A.

ADOPTED: This 27th day of July, 2020.

Council President

APPROVED: This 27th day of July, 2020.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on July 27, 2020, as same appears in the minutes of record of said meeting.

City Clerk



Janet Forbes <forbesj@mtnbrook.org>

2020 Street Striping Bid

1 message

Ronald Vaughn <vaughnr@mtnbrook.org>

Mon, Jul 20, 2020 at 3:52 PM

To: Sam Gaston <gastons@mtnbrook.org>, Steve Boone <boones@mtnbrook.org>, Janet Forbes <forbesj@mtnbrook.org>

Bids were solicited for the City of Mountain Brook's Street Striping Project, B-20200624-663 by the Public Works Department. All bids were opened and publicly reviewed on July 8, 2020. Please find attached the bid tabulations for the Street Striping.

I am recommending we award the Street Striping contract to Highway Systems who was actually a little higher than Ozark Striping. However Ozark Striping had several exceptions to our bid specifications that we could not work around.

 [2020 Bid Tabulation_Street Striping Project.xlsx](#)

Ronnie Vaughn

Public Works Director
City of Mountain Brook AL
3579 East Street
Birmingham , Alabama 35243
205.802.3865 Office
205.967.2631 Fax
vaughnr@mtnbrook.org

2020 Bid Tabulation for Street Striping Project
Three Year Contract
July 8, 2020

HIGHWAY MANAGEMENT SYSTEMS INC

<u>DESCRIPTION</u>	<u>UNIT</u>	<u>Annual Quantities</u>	<u>UNIT BID</u>	<u>AMOUNT</u>
Solid Yellow, Class A Type 1 Traffic Stripe	Miles	50	\$850.00	\$42,500.00
Solid White, Class A, Type 1 Traffic Stripe	Miles	50	\$850.00	\$42,500.00
Raised Reflective Traffic Markers	Each	6,000	\$6.00	\$36,000.00
Thermo Plastic 24" Wide, White	Sq. Ft.	14,000	\$5.50	\$77,000.00
Thermo Plastic 8" Wide, White	Sq. Ft.	4,000	\$5.50	\$22,000.00
Thermo Plastic Turn Arrows, White	Each	100	\$100.00	\$10,000.00
Thermo Plastic Centerline, Yellow	Linear Ft.	200,000	\$0.75	\$150,000.00
Thermo Plastic Side Lines, White	Linear Ft.	100,000	\$0.75	\$75,000.00
<u>TOTAL AMOUNT BID</u>				\$455,000.00

OZARK STRIPING COMPANY, INC

<u>DESCRIPTION</u>	<u>UNIT</u>	<u>Annual Quantities</u>	<u>UNIT BID</u>	<u>AMOUNT</u>
Solid Yellow, Class A Type 1 Traffic Stripe	Miles	50	\$780.00	\$39,000.00
Solid White, Class A, Type 1 Traffic Stripe	Miles	50	\$780.00	\$39,000.00
Raised Reflective Traffic Markers	Each	6,000	\$5.50	\$33,000.00
Thermo Plastic 24" Wide, White	Sq. Ft.	14,000	\$5.00	\$70,000.00
Thermo Plastic 8" Wide, White	Sq. Ft.	4,000	\$5.00	\$20,000.00
Thermo Plastic Turn Arrows, White	Each	100	\$100.00	\$10,000.00
Thermo Plastic Centerline, Yellow	Linear Ft.	200,000	\$0.75	\$150,000.00
Thermo Plastic Side Lines, White	Linear Ft.	100,000	\$0.75	\$75,000.00
<u>TOTAL AMOUNT BID</u>				\$436,000.00 *Special Notes



CITY OF MOUNTAIN BROOK

56 Church Street
P.O. Box 130009
Mountain Brook, Alabama 35213
Telephone: 205.802.3803
Fax: 205.870.3577
gastons@mtnbrook.org

SAM S. GASTON
CITY MANAGER

July 16, 2020

Ozark Striping Company
Attention: Mr. Leon M. Gross III, President
P.O. Box 847
Ozark, AL 36361
Transmitted via Electronic Mail to leegross@ozarkstriping.com & Regular U.S. Mail

Re: Bid by Ozark Striping Company -City of Mountain Brook, AL
STREET STRIPING PROJECT B-20200624-662 (Project)

Dear Mr. Gross:

I am the Purchasing Agent and City Manager for the City of Mountain Brook, Alabama (City). As you know, the City previously invited interested contractors to submit sealed bids to be considered for the award of a three-year contract for the above-referenced Project (Contract). This concerns the bid that your firm - Ozark Striping Company (Ozark) - submitted for the Project and that was opened on July 8, 2020 (Bid).

Thank you very much for submitting Ozark's Bid of \$435,000 for striping work and related operations that it might perform during the first year of the Contract. We recognize that Ozark has expended resources to evaluate and submit this Bid, and sincerely appreciate its interest in doing business with the City.

With Ozark's Bid your firm included certain Special Notes for Bids (Special Notes) that, if Ozark were awarded the Contract, would apply for its operations. Effectively, these Special Notes are exceptions to the Project specifications that Ozark proposes be incorporated into the Contract.

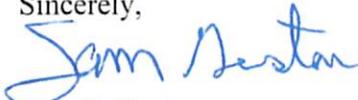
The City has carefully considered these Special Notes. They include conditions for the City to provide Ozark 14 days advance before commencing work at a given location(s), to aggregate its request for work in a manner that would assure no less than a "10 Mile Minimum" of services when services are scheduled, and to pay a variety of minimum charges per different types of requested operation. We appreciate the economies of scale and efficiency that these proposed conditions are intended to produce for Ozark.

However, please understand that, when considering the design and layout of the City of Mountain Brook, there are relatively few long, wide roads in its corporate limits. Indeed, it has and maintains a high volume of shorter, low speed, two-lane streets, and many of those streets are residential and winding in nature. Accordingly, when services are required under the Contract, the City may not be able to comply with Ozark's proposed condition for a 10 Mile Minimum work order. Also, due to the propensity of vehicular congestion along its many residential streets, the City commonly requires that striping operations be undertaken and completed in less than the 14-day advance notice period requested by Ozark. Finally, Ozark's proposed minimum charges for various types of operations is financially problematic for the City as we expect it will prove difficult to lump requests for work into larger groups by type of operation.

Under these circumstances, the City is unable to accept and incorporate the Special Notes for Bids into the anticipated Contract, and hereby determines that Ozark's Bid is not responsible for Project B-20200624-662. Although this determination disqualifies Ozark's Bid from consideration of the award of the Contract for this Project, it does not preclude Ozark from bidding on other projects for the City, and does not negatively reflect in any manner on your firm or its operations.

We wish Ozark all the best in its other future business endeavors.

Sincerely,

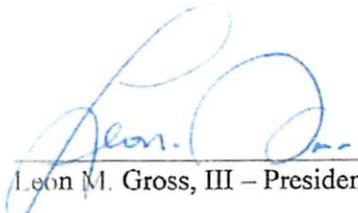


Sam S. Gaston
City Manager

Cc: Ronnie Vaughan, Director – Public Works Department
Hunter Johnson, Public Works Department
Steve Boone, City Clerk

**Ozark Striping Company
Special Notes for Bids**

- Note:** The total minimum dollar volume ordered for Class 1 Striping shall exceed two thousand, five hundred dollars (\$2,500.00) per work order.
- Note:** The total minimum dollar volume ordered for Class 2 Striping shall exceed seven thousand, five hundred dollars (\$7,500.00) per work order.
- Note:** The total minimum dollar volume ordered for Class 2T Striping shall exceed seven thousand, five hundred dollars (\$7,500.00) per work order.
- Note:** The total minimum dollar volume ordered for Control Markings & Legends Class 2 or Rumble Strips shall exceed one thousand, five hundred dollars (1,500.00) per work order.
- Note:** The total minimum dollar volume ordered for Temporary Traffic Stripe shall exceed one thousand dollars (\$1,000.00) per work order.
- Note:** The total minimum dollar volume ordered for Road Pavement Markers shall exceed one thousand, two hundred fifty dollars (\$1,250.00) per work order.
- Note:** Prices quoted in this bid do not include any cleaning of roadway, no sweeping, no cutting of grass from shoulders, no debris removed and no washing of roadway.
- Note:** These items are quoted under the 2019 ALDOT Specifications prior to any special provisions.
- Note:** Ozark Striping Company will accept this bid on an all or none basis only.
- Note:** Ozark Striping Company requires at least 14 days notice before work can begin for scheduling purposes. We would also request that you send us your work orders in a group that contains a 10 Mile Minimum. We would also request at least 14 days to complete our work order. If you accept our bid and issue a purchase order, these terms and conditions will apply.
- Note:** All 2T lines will be shot at 60 mil.



Leon M. Gross, III – President

STREET STRIPING PROJECT 2020 CONTRACT

This Street Striping Project 2020 Contract (the "Contract") is made by and between Highway Management Systems (the "Contractor") and the City of Mountain Brook, Alabama (the "City") effective as of the date last signed below by a party (the "Effective Date").

WHEREAS, on Project B-20200624-662 the City has conducted a competitive bid process to award a three-year unit price contract in connection with striping and marking streets in the City and performing operations related thereto (the "Work" or "Project");

WHEREAS, the City has determined Contractor to be the lowest responsible bidder in response to its Invitation for Bids for the Project issued on or about June 24, 2020;

WHEREAS, Contractor agrees to perform the Work in compliance with all Contract Documents in the Project Manual (including the Specifications & Conditions and the Contractor Bid Response Form), which documents are incorporated by reference and collectively may be referenced herein as the "Contract Documents"; and

WHEREAS, the City and Contractor deem it desirable to memorialize the terms and conditions of this Contract.

NOW, THEREFORE, in consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the Contractor and City agree as follows:

1. **Work.** Contractor shall perform the Work in accordance with the terms, provisions and conditions of the Contract Documents (including the Specifications & Conditions) and this Contract. The Contractor's Bid Response Form is also incorporated herein and made a part hereof by reference. The Contractor will be compensated for performing the Work at the prices set forth in the Contractor Bid Response Form.

2. **Term/Early Termination.** The term of this Contract shall commence on August 1, 2020, and thereafter continue in effect for a period of three (3) years (the "Term"). Notwithstanding the provision immediately above or any other provision herein or in the Specifications, the Contract may be terminated before the expiration of its Term on the occurrence of any of the following:

- (a) **Termination for Cause by City.** If the Contractor fails to perform any material obligation as required in the Specifications or this Contract (a "Default"), the City may terminate the Contract for cause on thirty (30) days' advance written notice to Contractor; provided that the Contractor shall have a reasonable opportunity to cure or correct any deficiency in performance that is the basis of the proposed termination for cause. This termination remedy is in addition to any other remedy or right provided to the City in the Contract or available by law that arises from a Default. The circumstances that may constitute a Default by the Contractor include, but are not limited to the following: (i) its failure to perform the Work in a satisfactory manner; (ii) its failure to perform the Work in a timely manner; (iii) the accumulation of substantial evidence that the progress being made by the Contractor is insufficient to complete the Work within the specified time; (iv) the deliberate failure on the part of the Contractor to proceed with the construction of the work when so instructed by the City or to observe any requirements of the Specifications; and (v) the Contractor's failure to promptly make good any defects in materials or construction that may be called to its attention by the City; and

- (b) Termination for Cause by Contractor. If the City does not perform a material obligation in the Specifications or in this Contract, the Contractor may terminate the Contract for cause on thirty (30) days' advance written notice to the City; provided that the City shall have a reasonable opportunity to cure or correct any deficiency in performance that is the basis of the proposed termination for cause; and
- (c) Termination for Non-Appropriation. Notwithstanding any other provision above in this section or elsewhere in this Contract, the City, effective upon provision of written notice to Contractor, may terminate this Agreement at the end of the first or second contract year without cause or the occurrence of a Default and without any liability, penalty or obligation to pay for Work after the effective date of termination if its governing body does not appropriate or allocate funds for the Project. In the event of such termination for non-appropriation, the City shall remain obligated to pay for Work performed by the Contractor prior to termination.

In the event a Contractor Default occurs and the Contract is terminated, Contractor shall discontinue its operations to perform the Work. Moreover, the City, in addition to exercising its right to terminate this Contract, may have the Work completed by another contractor(s), in which event Contractor shall be responsible for the difference, if any, between the amount paid by the City to another contractor to complete the Work and that provided for hereunder as the cost of the Work if it were performed by the Contractor. No failure on the part of the City to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof.

3. Payment to Contractor. The amounts to be paid to Contractor shall be calculated and based on the unit prices set forth in its completed Contractor Bid Response Form, which Form is incorporated by reference herein.

4. Project Representatives. Each party shall appoint a representative(s) who shall coordinate with the other party on matters pertinent to the performance of the Work and the administration of this Contract (the "Project Representative(s)").

The City's Project Representatives are:

Hunter Johnston, Public Works Dept.
 3579 East Street.
 Mountain Brook, AL 35243
 Email: johnstonh@mtnbrook.org
 Tel No: 205-802-3875

The Contractor's Project Representative is:

Jim Toner
Chad Smith
 1110 Hwy 31, Calera, AL 35040
 Email: jim.toner@highway systems.org
 205-663-1511

The Project Representatives designated above shall have the authority to act on behalf of its respective organization to transmit instructions, receive information and administer the Contract consistent with its terms and conditions. Either party may designate a Project Representative other than the person named above upon provision of written notice to the other.

5. Notices. Any notice required hereunder shall be sufficiently given when given in writing and sent to the appropriate Project Representatives via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to that party.

6. Dispute Resolution. The Project Representatives of the parties will use their good faith efforts to resolve any dispute or claim between them arising from the performance or failure to perform their respective obligations under this Agreement (a "Dispute"). If those Representatives are unable to amicably resolve a Dispute, it will be escalated to the senior manager/official level of each party for consideration. If the Dispute cannot be resolved at the senior official level, either party may request that the Dispute be mediated.

However, if the parties are unable to amicably resolve any Dispute, the dispute resolution mechanism for any claim between the parties shall be litigation in a court located in Jefferson County, Alabama. If (i) the City should employ attorneys or incur other expenses in any legal action regarding a Dispute, and (ii) the City secures a final judgment before a court of competent jurisdiction or obtains other relief from an administrative body related thereto against the City, the Contractor will reimburse the City for its reasonable attorneys' fees and other reasonable expenses that are incurred in that action.

7. Indemnification by Contractor/Insurance Requirements

(a) **Indemnification.** The Contractor agrees to defend, indemnify, and hold harmless the City of Mountain Brook, and its agents, employees and officials (hereinafter the "Indemnitees") from and against from and against all demands, actions, damages, judgments, expenses (including, but not limited to, attorneys' fees, expert fees, court costs and other litigation costs), losses, damages, and claims (including those for bodily injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property, or those for financial loss or damages) (collectively herein "Claim(s)") by any third parties (including any employee, subcontractor or representative of the Contractor, hereafter a "Contractor Representative") asserted against any Indemnitee(s) that arise out of, relate to, result from, or are attributable to any of the following: (a) any conditions in or about the work sites on which the Contractor or any Contractor Representative may enter or encounter in performing the Work; and (b) any negligent act, omission or conduct by the Contractor or any Contractor Representative that arises from or relates to its (or their) performance or failure to perform its (or their) responsibilities under this Contract or the Work. This indemnification obligation includes Claims by third parties that are caused in part by the negligence of an Indemnitee; provided, nothing herein shall obligate the Contractor to indemnify any of the Indemnitees for Claims resulting from the sole negligence or from the willful misconduct of the Indemnitees.

(b) **Insurance Requirements.** The Contractor shall maintain the following types of insurance for the duration of this Contract and for limits not less than stated below:

(i) **Comprehensive General Liability** for all operations performed by or on behalf of the Contractor or any Contractor Representative related to or arising from the performance of the Work or Project contemplated in the Contract, with limits of not less than

- \$1,000,000 combined single limit and aggregate for bodily injury (excluding auto) and property damage (excluding auto), per occurrence; and
- Excess umbrella coverage of \$1,000,000.00 for each occurrence

This insurance shall include coverage for assumed contractual liability; completed operations; damages to third parties for personal injury (including death) and property damage; and damage, destruction and injury to City property and City personnel caused by or resulting from the operations of the Contractor and any Contractor Representative;

(iii) **Automobile Liability** of not less than \$1,000,000 with excess umbrella coverage of \$1,000,000.00 for each occurrence. This insurance shall cover any owned or rented vehicles or equipment utilized for the Project;

(iv) **Workers' Compensation** as required by statute; and

(v) Employer's Liability – liability limits of \$500,000 per occurrence.

All required insurance shall be provided by a policy(ies) issued by a company or companies qualified to engage in the insurance business in the State of Alabama with a rating reasonably acceptable to the City. These insurance requirements are in addition to and do not affect any indemnification obligation of the Contractor herein.

Except for the Workers Compensation and Employer's Liability coverage, all coverage shall contain endorsements naming the City of Mountain Brook, and its officers, employees and agents, as additional insureds with respect to liabilities that arise out of and result from the operations of the Contractor or the performance of the Work. Before the commencement of the Work hereunder, the Contractor shall provide the City a certificate(s) of insurance and endorsements (including the additional insured endorsements) evidencing compliance with the requirements in this section.

8. Safety. Contractor exclusively shall be responsible for traffic control, the safety of its personnel (and that of any subcontractor or subcontractor personnel), the protection of its equipment and the protection of the Work while performing its operations on or about the City streets and property (the "Work Sites"). In addition, Contractor shall undertake whatever precautions and practices that it determines are necessary (including, but not limited to, the posting of signs warning against hazards, use of flagmen, etc.) to maintain a safe work environment and at all times to protect the general public, its personnel, its equipment, City personnel and City property from injury, damage or loss in the course of its operations.

The City makes no representation and gives no warranty that its Work Sites (or any equipment or improvements thereon) are safe or fit for the performance of the Work. Prior to commencing its operations, Contractor (and its representatives) agree to thoroughly examine, inspect and become familiar with each Site, determine that the Work at each such Site can be completed in an orderly and safe manner and implement whatever precautions, practices or actions that it deems are required to safely the Work in those locations.

9. Representations of Contractor. As further inducement to enter this Contract, the Contractor represents and warrants each of the following to the City:

- (a) that it will perform the Work in a good and workmanlike manner;
- (b) that, prior to entering this Contract, it has familiarized itself with the general conditions and nature of the Work sites where it will perform operations; and
- (c) that all actions required to be taken by it or on its behalf to execute the Contract, and to perform its obligations and agreements hereunder, have been duly taken.

10. Entire Agreement/Ineffective Provisions in Contractor Documents. This Contract (and the other Contract Documents) comprise the entire agreement between the parties concerning the matters herein. These terms, provisions and conditions in the Contract supersede all prior negotiations, representations or agreements, either written or oral, concerning the subjects herein, and any such prior understandings concerning these matters are of no effect and are merged into this Contract. Further, the parties agree that no terms, provisions or conditions that are stated in any work or purchase order, proposed invoice or other document generated by the Contractor in connection with the Work are not incorporated into or form part of the Contract. Notwithstanding the existence of any such documents, the parties understand, agree and covenant as follows:

- (a) The City shall not be liable to the Contractor for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs, and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor;

(b) The City shall not be liable for any late payment charges, interest, or fees on any delinquent billing for goods, materials, or services;

(c) The City will not indemnify, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the Contract or the performance or nonperformance thereof; and

(d) Unless expressly stated in the Contract, the City does not waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Contractor or any person, firm, or entity in privity therewith or acting on Contractor's behalf in connection with the performance of the Work. Any limitation or restriction regarding the type, nature, form, amount, or extent of any right, remedy, relief, or recovery that would otherwise be available to the City (or the City) is expressly disavowed, excluded from the terms of the Contract, and void.

11. No Assignment or Subcontracting Without Consent. Except as expressly authorized herein, Contractor may not assign, transfer, convey, sublet or otherwise transfer or dispose of any of its rights, obligations, responsibilities or interest therein to any other person, firm or corporation without the prior written consent of the City, which may be withheld for any reason. Unless expressly agreed to the contrary, in no event shall such consent relieve the Contractor from its obligations to the City hereunder or change the terms of the Contract. Further, if a subcontractor is approved and performs Work contemplated by this Contract, the Contractor shall remain responsible to the City for the actions, conduct and performance of the subcontractor (and any of its agents, employees or representatives), and any work performed by a subcontractor shall be considered as having been rendered by the Contractor and directly provided by it.

12. Miscellaneous Provisions.

(a) During the Term of this Contract, Company agrees to comply with all federal, state and local laws, regulations and codes applicable to the performance of the Work (collectively, "Laws"), including, but not limited to, Laws concerning the safety, inspection, maintenance, and operation of its equipment, employment laws related to its personnel, Occupational Safety Health & Administration (OSHA) regulations or other requirements intended to protect the safety of workers, Laws intended to protect the public, or Laws intended to protect the quality of air, water or environment. The requirements of these Laws shall be construed as the minimum requirements of the Contract.

(b) The Contractor is an independent contractor of the City. This Contract does not create any partnership, joint venture or principal-agent relationship between the Contractor and the City. Further, Contractor (and its employees, representatives or subcontractors) exclusively controls the means and methods it uses or selects to perform the Work, and the City retains no control or authority with respect to those means and methods.

(c) The Contractor may not assign this Contract, or any of its rights, obligations or the benefits hereunder, to any other party without prior written approval of the City, which approval may be withheld for any reason. In no event will this Contract be assigned to an unsuccessful bidder who was rejected because it was not a responsive or responsible bidder.

(d) The Contract is made only for the benefit of the City and the Contractor. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

(e) At its expense, Contractor shall secure and maintain throughout the Term of this Contract all licenses, permits and governmental approvals required to perform the Work which Contractor is obligated to perform hereunder.

(f) This Contract may be amended or modified only by written instrument signed by both parties. Further, neither the scope of Work nor the time of completion of Work operations may be changed except in accordance with the terms of a written change order signed by City and Contractor.

(g) This Contract may be executed in counterparts each of which when executed by the parties shall be deemed to be a complete original. Copies of this Contract showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals, and shall have the same legal force and effect as an original document.

(h) Any forbearance or delay on the part of the City in enforcing any of its rights under this Contract shall not be construed as a waiver of those rights. No terms of this Contract shall be waived by the City unless expressly waived in writing.

(i) If any provision of this Contract is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of it shall remain in full force and effect.

(j) In the event of a conflict between any term or provision in the Specifications (or other bid documents) and those in this Contract, the provisions in this Contract shall control and govern.

(k) **Exclusion of Consequential Damages.** NOTWITHSTANDING ANY OTHER PROVISION IN THIS CONTRACT, THE CONTRACTOR AGREES THAT, IN THE EVENT IT MAKES OR ASSERTS ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE CITY ARISING FROM ITS ALLEGED BREACH OF THIS CONTRACT OR ITS FAILURE TO PERFORM ANY OF ITS OBLIGATIONS HEREUNDER, THE MAXIMUM AMOUNT THAT THE CONTRACTOR MAY RECOVER FROM THE CITY AS DAMAGES IN ANY SUCH ACTION IS LIMITED TO THE CONTRACTOR'S ACTUAL, DIRECT DAMAGES ARISING FROM THE CITY'S BREACH. THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT THE TERMS IN THIS PROVISION WERE PROPOSED AND BASED ON THE ASSUMPTION THAT THIS SPECIFIC LIMITATION IS APPLICABLE, AND THAT THE CITY WOULD NOT HAVE ENTERED INTO THIS CONTRACT WITHOUT THE INCLUSION OF THIS LIMITATION. IN NO EVENT WILL THE CITY BE LIABLE TO THE CONTRACTOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOST ADVANTAGE, LOST OPPORTUNITY, LOSS OF SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS) ARISING FROM ANY BREACH OR ALLEGED BREACH OF THIS AGREEMENT BY THE CITY.

(l) **Choice of Law.** The meaning, legal effect, and enforcement of terms and provisions of the Contract and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama, except to the extent otherwise required by applicable conflict-of-law principles.

(m) **Construction.** Except as expressly stated herein, nothing in this Contract shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity. Furthermore, in the event that any ambiguity in the terms of this Contract is determined to exist, no presumption shall be made that either of the parties drafted the Contract.

(n) **Immigration Law Compliance.** The Contractor represents and warrants that (a) it does not knowingly employ, hire for employment, or continue to employ an "unauthorized alien," as defined by the *Beason-Hammon Alabama Taxpayer and Citizen Protection Act*, Act No. 2011-535 (H. B. 56), as amended from time to time (the "Act") and that, during the performance of this Agreement, it shall participate in the E-Verify program as required under the terms of the Act; (b) it will comply with all applicable provisions of the Act with respect to its contractors by entering into an agreement with or by obtaining an affidavit from such contractors providing that such contractors are in compliance with the Act with respect to their participation in the E-verify program; and (c) it shall not hire, retain or contract with any contractor that it knows is not in compliance with the Act. The Contractor further agrees and warrants

that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, in its hiring and employment practices, and that if it receives actual knowledge of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from the Project, jobsite or premises of the City and shall require each of its subcontractors, or other parties with whom it has a contract, to act in a similar fashion. If the Contractor violates any term of this paragraph, this Contract will be subject to immediate termination by the City. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the City from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Contractor's failure to fulfill its obligations contained in this paragraph.

(o) **City Audit Right/Contractor's Retention of Records.** Upon reasonable advance notice from the City during the course of performing the Work or in a periodic audit that follows the completion of part of all of that Work, Contractor, at its expense, agrees to produce for inspection those records maintained by it with respect to the Work for the City to evaluate whether the Contractor has properly completed, accounted and performed the transactions that are contemplated hereunder. To facilitate any such inspection or audit, the Contractor agrees that, for a period of no less than (2) years following the performance of its Work or the expiration (or earlier termination) of this Contract, it will maintain its reports, logs and records concerning its performance of Work, and the accounting, billing or other financial records that the Contractor generates regarding same.

In Witness Whereof the undersigned, duly authorized representatives of the parties have executed this Contract on behalf of their respective organization.

ATTEST

By: Crystal Smith
Its: Secretary

CONTRACTOR: Highway Management Systems

By: [Signature]
Its: _____
Date: 6/23/20

ATTEST

By: Paul Kinsey Forbes
Its: Asst to City Manager
Commission expires 3/3/24.

CITY OF MOUNTAIN BROOK, ALABAMA

By: Stewart H. Welch, III Sam S. Gaston
Its: Mayor CITY MANAGER
Date: 7-27-2020

II. SPECIFICATIONS & CONDITIONS

1. GENERAL SCOPE

The work to be performed by the successful contractor ("Contractor" or "contractor") shall consist of conducting operations to apply the following approximate quantities of stripes, markers and other materials for use on streets in the City of Mountain Brook ("City") by drivers and pedestrians at locations that are selected by the City:

Approximately 50 miles of Yellow Class A Type I Traffic Stripes, 50 miles of Solid White Class A Type I Traffic Stripes, 6,000 each Raised Reflective Traffic Markers, 14,000 square feet White Thermo Plastic 24" wide, 4,000 square feet White Thermo Plastic 8" wide, 100 each White Thermo Plastic Turn Arrows and 200,000 linear feet of Yellow Thermo Plastic Centerline, and 100,000 linear feet of White Thermo Plastic Sidelines.

("Work", "work" or "Project"). Contractor shall be responsible to furnish all labor, supervision, materials, tools, fuel, power, equipment and incidentals required to complete the Project in conformity with the requirements in the Specifications & Conditions and all other Contract Documents.

2. SPECIAL CONDITIONS

- A. Length of Contract. The City will award a three (3) year contract that will become effective August 1, 2020.
- B. Traffic Control: The Contractor is exclusively responsible for all traffic control related to the performance of the Work. This responsibility includes, without limitation, determining and implementing all appropriate measures to place signs, warn drivers, pedestrians and others affected by the Work, and utilize flag persons.
- C. Estimated Quantities. The Estimated Quantities stated above and elsewhere in the Contract Documents are the City's good faith approximations of the scope of Work and materials that is believed to be required during all 3 years of the contract. The City anticipates, but does not guarantee, that these quantities of Work will be ordered or required. These estimates are given for the sole purpose of receiving unit price bids and awarding the contemplated contract. The City does not warrant the accuracy of these estimates and approximations, that these quantities will be required to complete the Work, or that the successful contractor will receive any minimum amount of compensation based on these estimates.
- D. Unit Prices Constant During Term of Contract. The Unit Prices entered by the successful Contractor on its Bid Response Form (which Form is included herein) to apply the respective materials will remain constant throughout the term of the contemplated Contract.
- E. Increases or Decreases in Work. The City reserves the right to increase or decrease the estimated quantities in these bid documents without penalty, and except as provided in the specifications, any such increase or decrease in quantities will not change the unit prices over the term of the contract that are bid by the Contractor. If the actual quantities of Work performed deviate from the estimated quantities, no allowance will be made to Contractor for any change in anticipated profits, nor shall such changes be considered as waiving or invalidating any conditions or provisions of the Contract.
- F. Request for Work. The City may request Work on an as-needed basis at locations selected by it. The City will request any such Work by issuing a notice to proceed. Unless otherwise agreed, all Work

contemplated with respect to a notice to proceed issued by the City shall be completed within thirty (30) days after issuance of that notice.

- G. **Planning.** As soon as possible after the Effective Date of the contract and approximately thirty (30) days before its subsequent anniversaries, the City will meet with the Contractor to generally plan the order and times in which the Work will be performed during each contract year (the "Annual Schedule"). The City solely reserves the right to determine this Annual Schedule. However, in that scheduling meeting, the City agrees to consider in good faith the recommendations from the Contractor concerning scheduling the Work and selecting the streets on which operations will be performed in an order and manner that will expedite efficiencies in completing the Work.
- H. **Liquidated Damages.** If Contractor does not timely complete its Work on a specified street(s) or location after receiving a notice to proceed, the Contractor agrees that the City may deduct the amount below from any monies that are otherwise payable the Contractor under the contract:

*\$100.00 per day until Work at location(s) contemplated in City's
Notice to Proceed is substantially complete*

(the above amount being referenced as "Liquidated Damages"). The Contractor and City agree that calculating the actual damages that will flow from Contractor's failure to timely complete the Work would be difficult to estimate or prove. Therefore, the parties agree that the above Liquidated Damages amounts (a) are designed to compensate the City for the Contractor's failure to timely perform the Work, (b) are not penalties or intended as punishment, and (c) are intended to compensate the City for its inconvenience and the increased time in administering the Contract, supervision, inspection and engineering which is required for any operation or phase of the Project that is not completed within the time contemplated. Moreover, if the City permits the Contractor to continue and finish the Work (or any part of it) after the time for performance has expired, the performance of that delayed work will not waive, diminish or impact the City's rights under the contemplated contract to deduct Liquidated Damages.

- I. **Payment.** The City will pay Contractor for the Work based on the unit prices in its Bid Response Form and the actual quantity of materials supplied and operations furnished by it in accordance with the Specifications & Conditions. Additionally, the following understandings apply with respect to those payments:

(i) the determination of quantities of work acceptably completed will be made by the City's Project Representative based on measurements taken by him or his assistants. These determinations will be calculated according to United States standard measurements;

(ii) the compensation paid to the contractor is intended to constitute full payment for all of the following: it furnishing all labor, materials, tools, equipment and incidentals; for performing all work contemplated and embraced under the contract; for all loss or damage arising out of the nature of the work or from the action of the elements; for any unforeseen defects or obstructions which may arise during the prosecution of the work and before its final acceptance by the City; for all risks connected with the prosecution of the work; for all expense incurred by or in consequence of suspension or discontinuance of such prosecution of the work herein specified; and for completing the work in an acceptable manner according to the Specifications and Conditions;

(iii) Any materials or work covered by partial estimates shall, upon payment, become the sole property of the City; however, the City's payment of any partial or periodical estimates prior to final acceptance of the work shall in no way constitute an acknowledgment of the acceptance of the work nor in any way prejudice or effect the obligation of the contractor

to repair, correct, renew or replace, at its expense, any defects or imperfections in the construction or in quality of the materials used in the construction of the work;

(iv) Any extra work performed by the contractor and approved by the City will be paid at the lump sum and other rate agreed on in a change order or other writing that is signed by both parties before such work is begun. All extra work shall be subject to all other conditions of the contract;

(v) Partial Payments. At the end of each calendar month during the term of the contract, the Contractor may prepare and submit an invoice of an estimate of the quantities of work and of the total amount due therefore during that month. On or before the tenth (10th) day of the following month the City will review that request and, if properly submitted, make a partial payment to the contractor equivalent to the value of all work done to the end of the preceding month, less amounts authorized by the Public Works Law to be retained and less any previous payments. The City shall hold retained amounts until final completion and acceptance of all work contemplated under the contract (or part thereof), at which time the retained amounts and other amounts then due shall be paid in full;

(vi) When the work on the entire Project (or a part thereof) has been completely performed by the contractor, approved by the City Project Representative and accepted by the City, a final estimate will be prepared which shows the total cost of the work performed under the contract, (including extra work as authorized by change orders), the total amount retained and the total amount paid on previous partial estimates. All prior estimates upon which payments have been made are subject to necessary corrections or revisions in the final payment. All pay estimates will be certified as correct by the city Project Representative and approved by the owner before payment.

(vii) Final payment will be made to the contractor within ten (10) days after final acceptance of the work (or part thereof) by the City.

J. The Work shall be performed in compliance with all applicable provisions and regulations in the most current version of the Manual on Uniform Traffic Control Devices.

K. Warranty: Contractor warrants the fitness and soundness of all workmanship and materials for a period of ninety (90) days after the completion of the Work (or part thereof). This warranty period shall begin on the date of final estimate payment to the Contractor by the City with respect to the Work in question. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom within this period. The City will give notice of observed defects with reasonable promptness. At its own expense, Contractor shall replace or repair all defective materials and make good all defective workmanship to the reasonable satisfaction of the City.

None of the following shall relieve the Contractor of liability or responsibility with respect to this warranty or responsibility for to replace or repair faulty materials or workmanship: (a) the issuance or a final certificate of payment, (b) any provision in the Contract Documents, or (c) the City's partial or entire use of any Work site.

3. GENERAL CONDITIONS

A. Bidder's Obligations to Examine Contract Documents. Bidders are advised that the Contract Documents (and addenda or other information furnished in response to questions from interested contractors) constitute all the information that the City will furnish and that is applicable to the Project. No other information furnished verbally or otherwise by the City (or any of its representatives) prior to the execution of the Contract shall become a part of or change the Contract. Prior to submitting their bid, bidders are presumed to have carefully (a) read the Contract Documents (including the Specification and Conditions); (b) generally familiarized itself with the sites of the Work ("Work Site(s)"); (c) examined local conditions; and (d) determined for themselves by their independent research any difficulties to be encountered the accessibility of the Work, attending circumstances affecting the cost of performing it, the time required for its completion and considered all information required to make its proposal. Further, Bidders shall rely exclusively upon their own estimates, investigations and other data which they deem necessary for submitting a proposal. City may assume that, by making a proposal, the bidder has made these examinations and investigations.

B. Intent of Contract Documents. The intent of the Specifications and other Contract Documents is to prescribe a complete scope of work and responsibilities that the Contractor undertakes to do in full compliance with the Contract. The Contractor shall perform all work as provided in the Contract, and shall do such additional, extra and incidental work as may be considered necessary to complete that work in a satisfactory and acceptable manner. Any work or material not shown on the Specifications or Conditions but which may be fairly implied as included in any item of the Contract shall be performed and/or furnished by the Contractor without additional charge thereof.

C. Contract/Contract Documents. As used herein, the term "Contract" (or "contract") refers to the written agreement between the City and the successful Contractor for the performance of the Work. The Contract includes all the following documents and any approved addenda and change orders thereto: Invitation to Bid; Specifications & Conditions (including the Special Conditions and General Conditions for the Project); Instructions to Bidders (with EXHIBIT A - Contractor Bid Response Form, and EXHIBIT B - Bidder Qualification Form); and Contractor Qualifications/Requirements for Award Contract Award Process (with EXHIBIT C - Street Striping Project 2020 Contract) (collectively, the "Contract Documents").

In the event of any conflict between the terms, provisions and conditions in the different Contract Documents, the language in the document in the order below shall take govern and control: (1) Street Striping Project 2020 Contract; (2) Special Conditions; and (3) General Conditions.

D. Alterations. The City reserves the right, at any time, to make such changes in the plans and the character of the Work as may be necessary or desirable to insure the completion of the Project in the most satisfactory manner; provided that any such changes may not materially alter the original Specifications or change the general nature of the Work as a whole. Such changes shall not be considered as waiving or invalidating any condition or provision of the Contract.

E. Extra Work. When any extra work is necessary for the proper completion of the Project but no prices for that work are provided in the bid or Contract, the Contractor shall do such work when ordered by the City Project Representative if mutually agreed prices for such work have been agreed in advance.

F. Clean Up.

(i) Throughout the progress of the work Contractor shall keep the construction area, including storage areas used by him, free from accumulation of waste material or rubbish, and shall keep his materials and equipment in a neat and orderly manner. Immediately upon completion of any section of the work and before payment therefore has been made, contractor shall remove from the site all construction

equipment, temporary structures, and debris and shall restore the site to a neat, workmanlike condition. Waste material shall be disposed of at commercially reasonable locations selected by the contractor.

(ii) Where the contractor has performed work on, or has made use of, private property for storage of materials or for other purposes, it shall obtain a satisfactory release from the owner of said property after completing the work and removing all materials and equipment therefrom.

(iii) After completion of all work and before final cleanup of the site of each separate part of the Work; contractor shall restore all surfaces to a neat and orderly condition; and shall remove all construction equipment, tools and supplies therefrom.

G. Supervision. Contractor exclusively shall be responsible for supervising all Work. Notwithstanding, during the course of its performance, the City Project Representative may, but is not obligated, provide input to the Contractor Project Representative on the following matters: the quality and acceptability of materials furnished; rate of progress of the work; sequence of construction; interpretation of plans and specifications; compensation; and suspension of work if determined by the City representative to be required for public convenience. The provision of any such input will not excuse Contractor from its failure to comply with the Contract.

H. Conformity with Specifications. All Work shall conform to the Specifications and Conditions for the Project. Any deviation from those Specifications which may be required by the exigencies of construction must be approved by the City Project Representative and authorized by him in writing.

I. City Audit Right/Contractor's Retention of Records. Upon reasonable advance notice from the City during the course of performing the Work or in a periodic audit that follows the completion of part of all of that Work, Contractor, at its expense, agrees to produce for inspection those records maintained by it with respect to the Work for the City to evaluate whether the Contractor has properly completed, accounted and performed the transactions that are contemplated hereunder. To facilitate any such inspection or audit, the Contractor agrees that, for a period of no less than (2) years following the performance of its Work or the expiration (or earlier termination) of this Contract, it will maintain its reports, logs and records concerning its performance of Work, and the accounting, billing or other financial records that the Contractor generates regarding same.

J. City Street Plans. If requested by contractor, the City may furnish any maps of streets that it maintains for the sites where the Work will be performed. Contractor agrees and understands that the City does not warrant the location of gas mains, water mains, conduits, sewers, or other surface or subsurface improvements that may be indicated on these maps, and the City assumes no responsibility for failure to show any or all of them on those maps or to show them in their exact location. Contractor agrees that any such inaccuracies in these maps will not be considered sufficient basis for claims for extra work or for increasing the pay quantities, that such information and data furnished in those maps are not intended as representations or warranties but are furnished for information only, and that the City will not be responsible for the accuracy of any deduction, interpretation, or conclusion that the contractor draws from them.

K. Quality of Materials. Only materials that conform to the requirements of the Specifications herein and are customarily used on projects of this nature shall be used in the Work, and such materials shall be used only after approval has been given by the City Project Representative. All materials furnished for the work shall be new and unused and of recent manufacture.

L. Inspection. The City Project Representative may inspect all phases of the work in progress. Contractor shall furnish that Representative with every reasonable facility for ascertaining whether the work as performed is in accordance with the requirements and intent of the Specifications and Conditions. Should any work be covered or hidden prior to the approval thereof by the City's Project Representative, it shall be uncovered for examination at the contractor's expense.

M. Removal of Defective Work. Work performed that is not in conformity with the Specifications and Conditions will be removed and replaced at Contractor's risk and expense. Defective materials shall be removed immediately from the site of the work.

N. Preliminary Inspection. As each separate part of the work is completed, it shall be inspected by the City Project Representative. If that work is found to be in substantial compliance with the Specifications, it shall be tentatively accepted by the City. Thereafter, all such completed and accepted part of the work shall be maintained in good condition by and at the expense of the contractor until final acceptance by the owner of all work covered by the contract. Tests of the work may be performed following this preliminary approval.

O. Final Inspection. After the construction of all work under the Contract has been completed, the City Project representative, contractor and other representative of the City shall make a joint final inspection of all phases of the Work. If the work is not acceptable at the time of such inspection, the City Project Representative will notify the Contractor of the defects which must be remedied before final acceptance can be made.

P. Compliance with Laws. The contractor shall, at all times, observe and comply with all Federal and State laws and local ordinances and regulations which in any manner affect the conduct of the work, and shall observe and comply with all orders and decrees which exist at the present or which may be enacted later, or bodies or tribunals having jurisdiction or authority over the work.

Q. Permits. At its expense, the contractor shall procure, and maintain throughout the term of the Contract, all governmental permits and licenses required to perform the work and provide all notices necessary and incident to lawful prosecution of the work.

R. Patented Devices. Contractor (and the Surety issuing any performance bond) shall indemnify and save harmless the City and its representatives from all and every demand for damages, royalties or fees on any patented devices, materials and processes used by the Contractor or used in connection with the Work done or material furnished under the contract.

S. Public Convenience and Safety.

(i) Where the work is located in, on or near City streets, alleys, rights-of-way or highways, the contractor shall store construction materials and equipment and perform the work in such a manner as will provide reasonably adequate and satisfactory convenience for the general public and residents affected by the work.

(ii) No street shall be closed without the permission of the City Project Representative and the fire department having jurisdiction.

(iii) Storage of materials and the work shall be arranged so that there will be free access to all fire hydrant, valves, manholes and other utility appurtenances.

(iv) Where the work is located in or adjacent to any street, alley or public place, contractor, at its own expense, shall furnish and erect such barricades, fences, signs, lights and danger signals and shall provide such watchmen as are required to protect persons, property and the work from injury, damage or loss. Contractor shall be solely responsible for all damages to the third persons or the work due to failure of barricades, signs, lights and watchmen to protect any of them from injury or damage. The Contractor's responsibility to protect the public or work shall not cease until the City has finally accepted the work.

T. License to Use City Streets. During the period the Contractor performs the Work, the City grants a license to occupy such portions of its streets, ways or public property as will not unduly restrict traffic or endanger the public.

U. Use and Restoration of Private Property. Contractor shall not enter upon private property for any purpose without first obtaining permission from its owner. Contractor shall be responsible for the preservation of, and shall use every precaution necessary to prevent damage to, all trees, shrubbery, fences, culverts, bridges, pavement, driveways, sidewalks, etc. and to all water, sewer, gas, telephone, and electric lines thereof, and to all private property along or adjacent to the work.

V. Responsibility for Damage. When and where any direct or indirect injury, loss or damage or injury to public or private property on account of any act, omission, neglect or misconduct in the execution of the Work by the contractor, it shall restore, at its expense, such property to a condition similar or equal to that existing before such damage or injury was done by repairing, rebuilding or otherwise restoring it as may be directed, or it shall duly compensate the property owner for any damage or injury.

W. Public Utilities. If prosecution of the work requires that any property used by public utilities be cut, moved, relocated, rebuilt, or otherwise disturbed in any way, the contractor shall notify the utility to make the required changes, and, prior to making application to the utility, make all preliminary arrangements with the utility owner, including the scheduling of work. The City shall not be responsible for any delays in the accomplishment of the required changes on utility property by reason of the contractor's failure to schedule the work properly or otherwise, and in no case shall the contractor be allowed any claim for extension of time or additional compensation based on failure of the utility owner to make the needed changes within the stipulated period of time.

Z. Service Connections. If service connections or lines from water or gas mains or sewers to the user's premises are disconnected, broken, damaged, or otherwise rendered inoperative for any reason by the contractor in prosecuting the Work, contractor, at its own expense, shall repair or replace same and restore service to the affected premises at the earliest possible time.

Y. Water/Electricity/Gasoline/Supplies. Contractor, at its expense, is responsible to provide and maintain at an adequate supply of any water, electricity, gasoline or other supplies required for the Work.

Z. Use of Part of Completed Work. Whenever, in the opinion of the City Project Representative, any portion of the Work is in suitable condition, it may be put into use upon his written order; provided that such usage shall not be held to be in any way an acceptance of the work or as a waiver of any of Specifications & Conditions or other obligations in the Contract Documents. Pending final completion and acceptance of the work, all necessary repairs and renewals of any section of the work so put into use shall remain the responsibility of the contractor if due to defective material or workmanship, to natural causes other than ordinary wear and tear or to the operation of the contractor.

AA. Contractor's Responsibility for Claims.

(i) The contractor (and its surety) shall defend, indemnify and save harmless the City (and all its officials, agents, and servants) against any claims of liability arising from or based on the violation of any law, ordinance, regulation, order or decree related to the performance of the Work, whether such violation is committed by contractor, its employees or any of its subcontractors, in the course of performing (or failing to perform obligations hereunder related to) the Work.

(ii) The contractor (and its surety) shall defend, indemnify and save harmless the City (and all its officers, agents and employees) from all suits, actions or claims of any character, name and description brought for, or on account of any injuries or damages received or sustained by any person, persons or property from any of the following: (a) the contractor's neglect in performing or safeguarding the work; (b) the use of unacceptable materials in performing the work; or (c) by on account of any claim or amounts arising or recovered under the "Workmen's Compensation Law" or any other law, ordinance, order or decree.

(iii) The contractor guarantees payment of all just claims for materials, supplies, tools, equipment or labor from any subcontractor that performs work for it under the contract.

BB. Insurance. Contractor is responsible to provide the insurance stipulated in Section 7(b) of the prototype Contract that is included in the Contract Documents.

CC. Contractor's Responsible for Work until Accepted. Contractor shall remain responsible for the work at a work site until it is finally accepted by the City Project Representative. All work there shall be under the charge and care of the contractor, and it shall take every necessary precaution to prevent injury or damage to any person from any other cause whatsoever (whether arising from its execution or failure to execute the work) until such acceptance occurs. Further, contractor, at its own expense, shall rebuild, repair, and restore all injuries or damage to any portion of the work occasioned by any cause before acceptance.

DD. The parties agrees that, if Contractor is unable to complete the Work (or a part thereof) because of unforeseeable events or matters that are beyond its reasonable control and that do not result from its negligence (for example, strikes, shortages of material, governmental preemption in connection with a national emergency and Acts of God), the time for completing the Work may be extended by the length of time equal to the duration of any such events matters. Such extensions of time shall be considered only when submitted to the City Project Representative in writing within ten (10) days from and after the time when any such alleged cause of delay shall occur.

EE. Grounds for Termination of Contract: See Section 2 of prototype Contract that is included in these Contract Documents.

FF. No Waiver by City. The City shall not waive any of its rights or powers under the contract by occurrence of the following: any inspection of the work by the City Project Representative (or by any of his duly authorized representatives); the issuance of any order, measurement or certificate by that Representative; any order by the City to pay money; the City's acceptance of any work; or the City's grant of any extension of time to complete work. Further, no waiver of any breach of contract shall be held to be a waiver of any other or subsequent breach.

GG. No Assignment or Subcontracting without City's Consent. The contractor shall not assign any benefit, obligation or right under the contract, or subcontract any part of the work to a subcontractor, in whole or part, without prior written consent of the City, which consent may be withheld for any reason. Any authorized subcontracts shall comply with the applicable provisions of the principal contract, and the contractor shall be fully responsible for the acts and omissions of his subcontractors.

HH. Prosecution of Work. In performing the work, the contractor shall

(i) continuously and diligently prosecute the work in such order and manner to complete it in a safe, workmanlike and timely manner;

(ii) exclusively be responsible for training and supervising all of its personnel, and take necessary actions to ensure that that its workmen have sufficient skill and experience to properly perform the work assigned to them;

(iii) comply with all federal, state and local laws, regulations and ordinances governing the employment of labor and the payment of wages thereto for work performed under this contract; and

(iv) furnish an ample force of trained laborers, tools, supplies and equipment that it considers necessary to complete the work at a satisfactory rate of progress.

HH. Temporary Suspension. The City shall have the authority to suspend the prosecution of the work in whole or part for such period(s) of time as its Project Representative deems necessary. The contractor shall proceed with the work promptly when notified by that Representative to resume operations. The contractor shall not suspend work without written authority from the City Project Representative.

II. Fulfillment of Contract. The contract will be considered fulfilled when all the work has been completed, the final inspection has been made, the City has received satisfactory evidence of payment by the Contractor for all labor and materials used in the work, Contractor has duly advertised its completion of the Project and final payment has been made by the City. Notwithstanding the fulfillment of the contract, that occurrence shall not be construed to waive, modify, limit or affect any of the City's rights hereunder related to the Contractor's one-year warranty, any of the City's rights under any construction bonds, or its rights under law.

THE AMERICAN INSTITUTE OF ARCHITECTS

AIA Document A310 Bid Bond

KNOW ALL MEN BY THESE PRESENTS, THAT WE Highway Management Systems, Inc.
1110 Highway 31, Calera, AL 35040

as Principal, hereinafter called the Principal, and Merchants Bonding Company (Mutual)
P.O. Box 14498, Des Moines, IA 50306 - 3498

a corporation duly organized under the laws of the State of IA
as Surety, hereinafter called the Surety, are held and firmly bound unto City of Mountain Brook

P.O. Box 130009, Mountain Brook, AL 35213-0009

as Obligee, hereinafter called the Obligee, in the sum of Five Percent of Amount Bid Not to Exceed Ten Thousand
Dollars Dollars (\$ 5%),
for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs,
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for 2020 Street Striping Project

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and materials furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 8th day of July, 2020

Crystal Smith
(Witness)

Highway Management Systems, Inc.

(Principal)
By: [Signature] (Title)

Jennifer Barranco
(Witness)

Merchants Bonding Company (Mutual)

(Surety)
By: [Signature] (Title)
Attorney-in-Fact Jeffrey W. Cutshall

**MERCHANTS
BONDING COMPANY™
POWER OF ATTORNEY**

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Jeffrey W. Cutshall

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

Surety Bond #: Bid Bond
Principal: Highway Management Systems, Inc.
Obligee: City of Mountain Brook

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

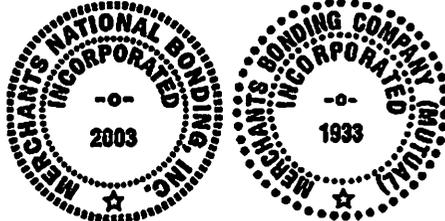
"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 8th day of July, 2020.



MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*
President

STATE OF IOWA
COUNTY OF DALLAS ss.

On this 8th day of July, 2020, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

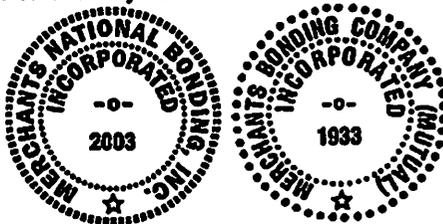


Polly Mason
Notary Public

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 8th day of July, 2020.



William Warner Jr.
Secretary

**CERTIFICATE OF ELECTION
(WITHOUT OPPOSITION)**

STATE OF ALABAMA

JEFFERSON COUNTY

CITY OF MOUNTAIN BROOK, ALABAMA

The undersigned hereby certify that Stewart Welch is the only person who has qualified for the elected office of Mayor and has therefore been deemed elected to the office of Mayor of the City of Mountain Brook, Alabama, for the term commencing on the first Monday of November, 2020.

Given under our hands pursuant to the requirements of Sections 11-46-20 et seq. of the Alabama Code of 1975, as amended, this 27th day of July, 2020.

Virginia C. Smith, Council President

William S. Pritchard, III,
Council President Pro Tem

Philip E. Black, Council member

Lloyd C. Shelton, Councilmember

Alice B. Womack, Councilmember

2020-120

**CERTIFICATE OF ELECTION
(WITHOUT OPPOSITION)**

STATE OF ALABAMA

JEFFERSON COUNTY

CITY OF MOUNTAIN BROOK, ALABAMA

The undersigned hereby certify that Virginia Carruthers Smith is the only person who has qualified for the elected office of City Council Place No. 4 and has therefore been deemed elected to the office of City Council of the City of Mountain Brook, Alabama, for the term commencing on the first Monday of November, 2020.

Given under our hands pursuant to the requirements of Sections 11-46-20 et seq. of the Alabama Code of 1975, as amended, this 27th day of July, 2020.

Virginia C. Smith, Council President

William S. Pritchard, III,
Council President Pro Tem

Philip E. Black, Council member

Lloyd C. Shelton, Councilmember

Alice B. Womack, Councilmember

2020-121

RESOLUTION NO. 2020-122

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby recommends to the State of Alabama, Alcoholic Beverage Control Board, the issuance of a 020 – Restaurant Retail Liquor license to Alverson and Ireland Fresh Foods, LLC (trade name: Porch), 2 Dexter Avenue, Mountain Brook, AL 35223.

BE IT FURTHER RESOLVED that the City Clerk is hereby instructed to forward a copy of this resolution to the State of Alabama, Alcoholic Beverage Control Board.

ADOPTED: This 27th day of July, 2020.

Council President

APPROVED: This 27th day of July, 2020.

Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on July 27, 2020, as same appears in the minutes of record of said meeting.

City Clerk



STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION



Confirmation Number: 20200710154211226

Type License: 020 - RESTAURANT RETAIL LIQUOR **State:** \$300.00 **County:** \$300.00

Type License: **State:** **County:**

Trade Name: PORCH **Filing Fee:** \$50.00

Applicant: ALVERSON AND IRELAND FRESH FOOD LLC **Transfer Fee:**

Location Address: 2 DEXTER AVENUE MOUNTAIN BROOK, AL 35213

Mailing Address: 2 DEXTER AVENUE MOUNTAIN BROOK, AL 35213

County: JEFFERSON **Tobacco sales:** NO **Tobacco Vending Machines:**

Type Ownership: LLC

Book, Page, or Document info: 2019078046

Date Incorporated: 08/01/2019 **State incorporated:** AL **County Incorporated:** JEFFERSON

Date of Authority: 08/01/2019 **Alabama State Sales Tax ID:** R010632081

Federal Tax ID: 843392968

Name:	Title:	Date and Place of Birth:	Residence Address:
SCOTT BROWN IRELAND JR 7312874 - AL	INVESTOR	03/11/1987 PENSACOLA FLORIDA	1918 21ST AVE S BIRMINGHAM, AL 35209
FRANK MARTIN ALVERSON JR 103637045 - SC	OWNER	06/19/1987 BIRMINGHAM ALABAMA	2503 D MOUNTAIN BROOK CIRCLE MOUNTAIN BROOK, AL 35213

Has applicant complied with financial responsibility ABC RR 20-X-5-.14? **YES**
 Does ABC have any actions pending against the current licensee? **NO**
 Has anyone, including manager or applicant, had a Federal/State permit or license suspended or revoked? **NO**
 Has a liquor, wine, malt or brewed license for these premises ever been denied, suspended, or revoked? **NO**
 Are the applicant(s) named above, the only person(s), in any manner interested in the business sought to be licensed? **NO**
 Are any of the applicants, whether individual, member of a partnership or association, or officers and directors of a corporation itself, in any manner monetarily interested, either directly or indirectly, in the profits of any other class of business regulated under authority of this act? **NO**
 Does applicant own or control, directly or indirectly, hold lien against any real or personal property which is rented, leased or used in the conduct of business by the holder of any vinous, malt or brewed beverage, or distilled liquors permit or license issued under authority of this act? **NO**
 Is applicant receiving, either directly or indirectly, any loan, credit, money, or the equivalent thereof from or through a subsidiary or affiliate or other licensee, or from any firm, association or corporation operating under or regulated by the authority of this act? **NO**

Contact Person: FRANK ALVERSON **Home Phone:** 205-616-8844
Business Phone: 205-616-8844 **Cell Phone:** 205-616-8844
Fax: **E-mail:** FMALVERSON@GMAIL.COM

PREVIOUS LICENSE INFORMATION: **Previous License Number(s)**
Trade Name: MAFIAOZA'S **License 1:** 001443537
Applicant: MAFIAOZA'S ALABAMA, LLC **License 2:**



STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
 ALCOHOL LICENSE APPLICATION
Confirmation Number: 20200710154211226



Private Clubs / Special Retail / or Special Events licenses ONLY

Private Club

Does the club charge and collect dues from elected members?
 Number of paid up members:
 Are meetings regularly held?
 How often?
 Is business conducted through officers regularly elected?
 Are members admitted by written application, investigation, and ballot?
 Has Agent verified membership applications for each member listed?
 Has at least 10% of members listed been confirmed and highlighted? Agent's Initials:
 For what purpose is the club organized?
 Does the property used, as well as the advantages, belong to all the members?
 Do the operations of the club benefit any individual member(s), officer(s), director(s), agent(s), or employee(s) of the club rather than to benefit of the entire membership?

Special Retail

Is it for 30 days or less?
 More than 30 days?
 Franchisee or Concessionaire of above?
 Other valid responsible organization:
 Explanation:

Special Events / Special Retail (7 days or less)

Starting Date: Ending Date:
 Special terms and conditions for special event/special retail:

Other Explanations

Are the applicant(s) named above, the only person(s), in any manner interested in the business sought to be licensed?: SCOTT BROWN IRELAND JR IS A MEMBER OF THE LLC. HE IS ALSO CONSIDERED TO BE A SILENT PARTNER WHILE FRANK ALVERSON JR IS THE MANAGING PARTNER
 License Covers: SHOPPING CENTER IS DIVIDED INTO 3 UNITS UNIT IS 1 OF 2 UPSTAIRS
 Additional Violations:
 Name: SCOTT BROWN IRELAND | Violation & Date: 1-4104 LIQUOR POSSESS - PUBLIC INTOXICATION 2006/09/03
 Arresting Agency: SHERIFF'S OFFICE TUSCALOOSA | Disposition: YOUTHFUL OFFENDER DISMISSED



STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION
Confirmation Number: 20200710154211226



Initial each

Signature page

FA

In reference to law violations, I attest to the truthfulness of the responses given within the application.

FA

In reference to the Lease/property ownership, I attest to the truthfulness of the responses given within the application.

FA

In reference to ACT No. 80-529, I understand that if my application is denied or discontinued, I will not be refunded the filing fee required by this application.

X

In reference to Special Retail or Special Events retail license, I agree to comply with all applicable laws and regulations concerning this class of license, and to observe the special terms and conditions as indicated within the application.

X

In reference to the Club Application information, I attest to the truthfulness of the responses given within the application.

X

In reference to the transfer of license/location, I attest to the truthfulness of the information listed on the attached transfer agreement.

FA

In accordance with Alabama Rules & Regulations 20-X-5-.01(4), any social security number disclosed under this regulation shall be used for the purpose of investigation or verification by the ABC Board and shall not be a matter of public record.

FA

The undersigned agree, if a license is issued as herein applied for, to comply at all times with and to fully observe all the provisions of the Alabama Alcoholic Beverage Control Act, as appears in Code of Alabama, Title 28, and all laws of the State of Alabama relative to the handling of alcoholic beverages.

The undersigned, if issued a license as herein requested, further agrees to obey all rules and regulations promulgated by the board relative to all alcoholic beverages received in this State. The undersigned, if issued a license as herein requested, also agrees to allow and hereby invites duly authorized agents of the Alabama Alcoholic Beverage Control Board and any duly commissioned law enforcement officer of the State, County or Municipality in which the license premises are located to enter and search without a warrant the licensed premises or any building owned or occupied by him or her in connection with said licensed premises. The undersigned hereby understands that he or she violate any provisions of the aforementioned laws his or her license shall be subject to revocation and no license can be again issued to said licensee for a period of one year. The undersigned further understands and agrees that no changes in the manner of operation and no deletion or discontinuance of any services or facilities as described in this application will be allowed without written approval of the proper governing body and the Alabama Alcoholic Beverage Control Board.

FA

I hereby swear and affirm that I have read the application and all statements therein and facts set forth are true and correct, and that the applicant is the only person interested in the business for which the license is required.

Applicant Name (print): *Frank Alverson*

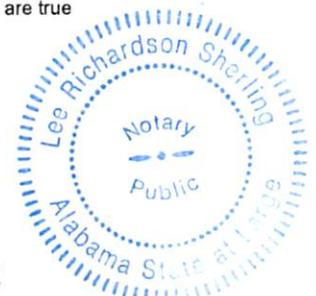
Signature of Applicant: *Frank Alverson*

LEE RICHARDSON SHERLING
 Notary Public, Alabama State At Large
 My Commission Expires Oct. 29, 2022

Notary Name (print): *Lee Richardson Sherling*

Notary Signature: *Lee Richardson Sherling*

Commission expires: *10/29/2022*



Application Taken: App. Inv. Completed:

Submitted to Local Government:

Forwarded to District Office:

Received from Local Government:

Received in District Office:

Reviewed by Supervisor:

Forwarded to Central Office:



**STATE OF ALABAMA
ALCOHOLIC BEVERAGE CONTROL BOARD
ALCOHOL LICENSE APPLICATION**



Confirmation Number: 20200710154211226

If applicant is leasing the property, is a copy of the lease agreement attached? **YES**
 Name of Property owner/lessor and phone number: **CRESTLINE PROPERTY LLC 000-000-0000**
 What is lessors primary business? **PROPERTY MANAGEMENT**
 Is lessor involved in any way with the alcoholic beverage business? **NO**
 Is there any further interest, or connection with, the licensee's business by the lessor? **NO**

Does the premise have a fully equipped kitchen? **YES**
 Is the business used to habitually and principally provide food to the public? **YES**
 Does the establishment have restroom facilities? **YES**
 Is the premise equipped with services and facilities for on premises consumption of alcoholic beverages? **YES**

Will the business be operated primarily as a package store? **NO**
 Building Dimensions Square Footage: **2751** Display Square Footage:
 Building seating capacity: **70** Does Licensed premises include a patio area? **YES**
 License Structure: **SINGLE STRUCTURE** License covers: **OTHER**
 Location is within: **CITY LIMITS** Police protection: **CITY**

Has any person(s) with any interest, including manager, whether as sole applicant, officer, member, or partner been charged (whether convicted or not) of any law violation(s)?

Name:	Violation & Date:	Arresting Agency:	Disposition:
SCOTT BROWN IRELAND	1-5404 DUI 2015/05/07	BIRMINGHAM POLICE DEPARTMENT	DISMISSED
SCOTT BROWN IRELAND	1-5404 DUI 2010/08/20	MOUNTAIN BROOK POLICE DEPARTMENT	DISMISSED
SCOTT BROWN IRELAND	1-FTA MINOR IN POSSESSION OF ALCOHOL 2009/03/28	TUSCALOOSA POLICE DEPARTMENT	PLED GUILTY



Alabama Alcoholic Beverage Control Board Licensing Division

Memorandum of Understanding for Restaurant Retail Liquor License

Restaurant Retail Liquor Licenses shall be issued only to reputable persons for locations which are "**habitually and principally**" used for the purpose of preparing and serving meals for the public to consume on the licensed premises during normal and reasonable dining hours. Only those locations whose customary and primary business is preparing and serving meals to the public will be issued a Restaurant Retail Liquor License.

Restaurant Retail Liquor Licenses applicants shall comply with all pertinent and related requirements of State, County, and where applicable, Municipal health departments prior to licensing and shall remain in compliance thereafter for as long as said license shall remain valid.

All Restaurant Retail Liquor Licensees shall have a fully equipped and operational kitchen on the licensed premises. The Licensee shall maintain and operate said kitchen and shall, upon order of a customer, prepare and serve all food items shown on its menu during normal and reasonable dining hours. Exceptions shall be made where there is a known and provable shortage or temporary unavailable supply of a food item.

Any applicant or Licensee shall, upon request, provide to the ABC Board, any records, books, ledgers, menus, receipts, or other documentation necessary to demonstrate compliance with this regulation.

In addition to the above Rule and Regulation, Title 28-3-1(23) defines a meal as a "diversified selection of food some of which is not susceptible of being consumed in the absence of at least some articles of tableware and which cannot be conveniently consumed while one is standing or walking about".

Additionally, Title 28-3A-13 states that a Restaurant Retail License is "for on premise consumption" and does not allow sales for off-premises consumption with the exception of re-corked wine conforming to 28-3A-20.1.

By signing this memorandum of understanding, the Licensee agrees and understands the requirements of obtaining and maintaining a Restaurant Retail Liquor License. Any deviation from these requirements will prohibit the ABC Board from issuing this type of License. Furthermore, failing to follow these requirements after obtaining a Restaurant Retail Liquor License could result in the protest of the renewal of this type license.

Signature Frank Alrerson

Date 6/25/20

Print Name Frank Alrerson

Position Held owner



CITY OF MOUNTAIN BROOK

P. O. Box 130009
Mountain Brook, Alabama 35213-0009
Telephone: 205.802.2400
Facsimile: 205.879.6913
www.mtnbrook.org

July 27, 2020

Ms. Valencia Johnson
Alabama ABC Board
234 Aquarius Drive, Suite 103
Homewood, AL 35209

Facsimile: (205) 942-2101

Gentlemen:

Attached is a copy of a resolution passed at the July 27, 2020, City Council meeting recommending the issuance of 020 – Restaurant Retail Liquor license as follows:

Alverson and Ireland Fresh Foods, LLC
Trade name: Porch
2 Dexter Avenue
Mountain Brook, AL 35213

If you have any questions, please call me at 802-3825.

Sincerely,

Steven Boone
City Clerk

Enclosure

c: Frank Alverson
fmalverson@gmail.com